

United States District Court
Southern District of California

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No. 10-CR-4246 JM
) Jury Trial/Day 4
BASAALY SAEED MOALIN,) Thursday, January 31, 2013
MOHAMAD MOHAMAD MOHAMUD)
ISSA DOREH,) Volume 4
AHMED NASIR TAALIL MOHAMUD,)
)
Defendants.)
_____)

Before the Honorable Jeffrey T. Miller
United States District Judge

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Official Court Reporter: Debra M. Henson, CSR, RPR
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Record produced by stenographic reporter

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1 San Diego, California - Thursday, January 31, 2013

2 (Defendant Mr. A. Mohamud is being assisted by a Somali
3 interpreter.)

4 THE COURT: Good morning, ladies and gentlemen.
5 Counsel wanted to address a matter?

6 MR. DRATEL: Yes, your Honor. Having this morning
7 read the Court's order with respect to defense's Brady
8 motion, I just wanted to clear up a misunderstanding with
9 respect to the last part of that, which is that it was -- it
10 was -- I believe that we had made a motion early on in our
11 pretrial motions for specific disclosure of the underlying
12 information with respect to the -- to compel the government
13 to disclose the underlying information, what was behind that
14 field assessment report. And if I misunderstood the Court's
15 ruling, I thought that we had asked for specific information
16 that was neither denied nor granted, but if that was part of
17 the Court's continuing order for the government's Brady, I
18 apologize for the misunderstanding.

19 THE COURT: You can assume the government's always,
20 always under the import of a Brady order.

21 MR. DRATEL: I understand that, and I --

22 THE COURT: The government has an obligation, a
23 lawful obligation over and above any order this Court may
24 make. As you know, they're obligated --

25 MR. DRATEL: I understand, your Honor, but at the

1 same time it always is good to have the influence of the
2 Court with respect to specific documents, and that's all we
3 were trying to do.

4 THE COURT: Okay. Well, as I said, I hope you're
5 comforted by the last part of that.

6 MS. MORENO: Yes, your Honor.

7 MS. FONTIER: Thank you, your Honor.

8 MS. HAN: Your Honor, and we also --

9 MR. DRATEL: I just wanted to add that we received
10 additional Brady material within the last day, day and a
11 half, with respect to the telephone conversations and notes
12 on that.

13 MS. HAN: Your Honor, if we can speak to that. I
14 believe that that information is actually Jencks material
15 and -- it's not Brady material, it's Jencks material.

16 THE COURT: Okay. Well, it can be both
17 technically.

18 MR. DRATEL: I'll just put on the record what it
19 was. It's the notes of a linguist about a telephone
20 conversation that he listened to that -- where he says I
21 believe that they are intending or that their intention is to
22 send -- that Moalin's intention is to send money to Somalia
23 for drought relief.

24 MS. HAN: In any event, your Honor, I believe that
25 that's taken out of context. There are multiple

1 additional --

2 THE COURT: That's okay.

3 MS. HAN: In any event, your Honor, the reason that
4 we wanted to speak with the Court is because in light of the
5 opening statements yesterday in which a couple of defense
6 counsel talked about the Ethiopian troops being occupying
7 forces and, in addition, Mr. Ghappour offered a jury
8 instruction for a necessity defense, we harken back to the
9 Court's ruling on our motion in limine to preclude the
10 necessity defense. I believe that your Honor's ruling was
11 that you wanted to hear a proffer --

12 THE COURT: There must be a proffer first before a
13 necessity defense is --

14 MS. HAN: Your Honor, we anticipate that defense
15 counsel will seek to elicit evidence on that point from
16 Mr. Bryden, and so in light of that, we would like a proffer
17 or we'd ask the Court to seek a proffer from the defense at
18 this point.

19 THE COURT: Well, I don't know that it's necessary
20 for the defense to justify its cross-examination of your
21 expert, of Mr. Bryden now by fitting it into what may
22 ultimately become part of an affirmative defense. Mr. Bryden
23 testified pretty widely on a number of different areas, and
24 so if the cross-examination appears to expand beyond what is
25 appropriate, then I assume you'll make the appropriate

1 objection and I'll have an opportunity to deal with it right
2 now. But it's a little difficult to deal with it
3 theoretically as you've -- as you've suggested. So you'll
4 reserve your objections and all grounds for your objections.

5 Okay. Let's see. I think we're just about ready
6 to -- a minute or two early. Let's get a reading on our
7 jurors and see if they're all here.

8 MR. DRATEL: Your Honor, while we're waiting --

9 THE COURT: I knew I should have left.

10 MR. DRATEL: I'm sorry?

11 THE COURT: I knew I should have taken off for two
12 minutes.

13 MR. DRATEL: The Court security -- the court
14 information computer officer arrived yesterday but the laptop
15 did not because of tornadoes; it's apparently stuck in FedEx.
16 It should be here today. As soon as we're finished with Mr.
17 Bryden, probably during lunchtime, I'll be able do the
18 Section 5 and get that --

19 THE COURT: Thank you. All right. We may have to
20 be waiting for one or two jurors, so as soon as we have
21 everyone here --

22 MR. COLE: Do you want our witness to come take the
23 stand again or --

24 THE COURT: That's fine.

25 MR. COLE: -- wait?

1 THE COURT: Why don't you have Mr. Bryden just wait
2 right behind you, and once we have our jurors in place, we'll
3 proceed, okay? All right. We'll resume in just a minute or
4 two.

5 (There was a break in the proceedings.)

6 (The jury entered the courtroom.)

7 THE COURT: Good morning, ladies and gentlemen. We
8 are ready to proceed with you, and I believe Mr. Bryden will
9 be taking the stand for cross-examination. Mr. Bryden, if
10 you would please take the stand. You've been previously
11 sworn, and you are still under oath.

12 Matthew Bryden
13 was called by the government and, having been previously
14 sworn, testified as follows:

15 JUROR LOPEZ: Your Honor?

16 THE COURT: Yes.

17 JUROR LOPEZ: We were discussing this monitor right
18 here, and the people behind me -- if it could be -- because
19 it's kind of like tilted, and they can't see it as well.

20 THE COURT: Okay. Fine. Do we -- Mr. Cole, do you
21 have your technician available? Apparently not.

22 MR. COLE: We'll get our technician down.

23 THE COURT: Why don't you do that.

24 JUROR LOPEZ: Thank you.

25 THE COURT: Okay. Mr. Dratel, are you ready to

1 proceed?

2 MR. DRATEL: I will, your Honor. Thank you.

3 Cross-Examination

4 BY MR. DRATEL: Q. Good morning, Mr. Bryden.

5 A. Good morning.

6 Q. During the course of your career, you have worked with
7 the U.S. government, correct?

8 A. That's correct.

9 Q. And even for the U.S. government?

10 A. That's right.

11 Q. And in the course of your career, either working for or
12 with the U.S. government, also as part of the UN Monitoring
13 Group, you've cooperated with law enforcement, intelligence,
14 diplomatic community from the U.S., correct?

15 A. That's correct.

16 Q. And other governments as well?

17 A. Yes.

18 Q. And you worked with the USAID, United States Agency for
19 International Development, right?

20 A. That's correct.

21 Q. Which is a U.S. government agency, and you've also worked
22 with the Department of Justice before?

23 A. Yes.

24 Q. Not just in testifying as an expert but in the course of
25 your career otherwise, you've worked with the Department of

1 Justice?

2 A. I've cooperated with the department.

3 Q. And the Department of the Treasury?

4 A. Yes.

5 Q. And Department of Defense?

6 A. Yes.

7 Q. And you frequently comment on the media or write op-ed
8 pieces about Somalia and the area in the Horn of Africa?

9 A. That's right.

10 Q. Now, you've worked with the United States Agency for
11 International Development, which we'll call USAID, I think,
12 USAID is a government agency that essentially contracts to
13 private agencies or NGOs to form development projects in
14 certain countries; is that a fair description?

15 A. That's part of what it does. It also gives assistance
16 directly to governments and through the United Nations.

17 Q. And when you were working for USAID, was your work mainly
18 in the Ogaden area?

19 A. No, it was mainly in -- in Somalia itself. That's when I
20 was contracted by Development Alternatives, Incorporated,
21 DAI, based in Nairobi.

22 Q. It's true though you haven't written much specifically
23 about the Galgaduud region?

24 A. That's correct.

25 Q. Or about Guraceel specifically in the Galgaduud region?

1 A. Not specifically, no.

2 Q. And you've written reports for USAID, right?

3 A. That's correct.

4 Q. And those were confidential reports at the time, right?

5 A. Some were.

6 Q. Withdrawn. They've never been publicly released,
7 correct?

8 A. Correct.

9 Q. And they were designed to help shape U.S. policy with
10 respect to Somalia, correct?

11 A. That's right.

12 Q. Now, in your -- in your work in the Horn of Africa, you
13 need the cooperation from governmental agencies not just
14 there but also internationally such as the U.S. and UN member
15 countries?

16 A. That's right.

17 Q. And you also need protection to a certain extent, whether
18 diplomatically or otherwise, from certain of these countries
19 as well operating in those areas, right?

20 A. Only from host governments, not from foreign governments.

21 Q. And you've had some issues with foreign governments from
22 time to time; fair to say?

23 A. In my work, yes, I've encountered issues with foreign
24 governments.

25 Q. And, in fact, just after finishing college, you were

1 arrested and detained by the Ugandan government, correct?

2 A. That's right.

3 Q. And you were traveling as a tourist at the time?

4 A. Yes.

5 Q. Did they tell you why you were detained?

6 A. For my own protection.

7 Q. Protection from --

8 A. It was an unstable area from the -- what was known as the
9 Holy Spirit Movement, which was active in that area.

10 Q. You obviously did not seek their protection?

11 A. No, I didn't seek their protection.

12 Q. But they imposed it on you nonetheless?

13 A. Yes.

14 Q. And for a couple of days, you were forced to stay at a
15 Red Cross guest house?

16 A. That's correct.

17 Q. And as a westerner do you think that you got an advantage
18 in terms of how you were treated by the Ugandan military, the
19 Ugandan government in that regard?

20 A. It's hard to say there. I'm not sure what other kinds of
21 tourists there might have been in that part of Uganda at the
22 time.

23 Q. And in 1996 you were abducted by a Eritrean rebel group?

24 A. No, by an Ethiopian rebel group.

25 Q. An Ethiopian rebel group. And when you were released,

1 that was about a week or so you -- and when you were
2 released, you were arrested by the Ethiopian authorities?

3 A. That's right.

4 Q. And they suspected you of being a trainer or an advisor
5 to the group that had in fact abducted you?

6 A. That's correct.

7 Q. And you were detained by Ethiopian authorities for about
8 a week, right?

9 A. Correct.

10 Q. And that was a mistake obviously?

11 A. That was a mistake.

12 Q. And you were working for the UN at the time --

13 A. Yes, I was.

14 Q. -- right? And you were not training or advising that
15 Ethiopian rebel group?

16 A. No, not at all.

17 Q. And did the UN play a part in gaining your release?

18 A. Yes, they did. They clarified my status with the
19 Ethiopian government, and a week later I was released.

20 Q. Did any other government -- did any other government play
21 a part, Canada, the United States?

22 A. Canada played a role.

23 MS. MORENO: I'm sorry, your Honor. I can't hear.

24 THE COURT: Yes. You're speaking very softly. I'm
25 going to ask you to keep your voice up and perhaps pull that

1 microphone a little bit closer to you.

2 BY MR. DRATEL: Q. So Canada also played a part in
3 gaining your release?

4 A. Yes, Canada played a role.

5 Q. Do you think you fared better as a result than let's say
6 an Ethiopian or a Somali in the same situation?

7 A. Probably, yes.

8 Q. Now, in July of 2007 I think you were detained by the TFG
9 at the Mogadishu Airport; is that correct?

10 A. Yes, although the date is incorrect.

11 Q. What was the date?

12 A. It was March 2007.

13 Q. March 2007. And you didn't have a visa, correct?

14 A. That's right. Visas are available on arrival.

15 Q. And not your first trip to Somalia, right?

16 A. No.

17 Q. And, in fact, you were stationed in Nairobi at the time,
18 right?

19 A. That's right.

20 Q. And that's because the U.S. -- one of the reasons is that
21 the U.S. does not have an embassy in Somalia, correct?

22 A. Correct.

23 Q. Does not have any diplomatic personnel on a permanent
24 basis in Somalia?

25 A. Correct.

1 Q. And another reason for being stationed in Nairobi is that
2 it's not particularly safe in Somalia either?

3 A. That's correct.

4 Q. And travel is not safe or easy in Somalia as well?

5 A. In most of Somalia that's correct.

6 Q. And in that instance, in March 2007, you were released
7 after one day, right?

8 A. That's right.

9 Q. But you were deported --

10 A. Yes.

11 Q. -- as well. They didn't give you the opportunity to get
12 your visa upon arrival?

13 A. No, they didn't.

14 Q. And you were working for USAID at the time?

15 A. That's right.

16 Q. Not a terrorist?

17 A. No.

18 Q. Did the USAID play a role in getting your release?

19 A. I believe the U.S. Embassy did.

20 Q. U.S. Embassy. In Kenya?

21 A. Yes.

22 Q. Again, if you were a Somali -- withdrawn. Do you think
23 you fared better as a westerner with the assistance of the
24 U.S. Embassy than a Somali would have under similar
25 circumstances?

1 A. I think that's fair.

2 Q. So you've been arrested by both the Ethiopians and the
3 Somalis?

4 A. Yes.

5 Q. And in August 2011, the president of Somalia, Sheik
6 Sharif Ahmed, wrote a letter to the UN declaring you a
7 persona non grata in Somalia?

8 A. That's correct.

9 Q. And just to refresh, Sheik Sharif Ahmed is the current
10 president of Somalia?

11 A. No, he's not.

12 Q. I mean he was president at the time that this was --
13 that -- back in August of 2011?

14 A. Yes, he was.

15 Q. And he initially had been one of the leaders of the
16 Islamic courts, correct, back in 2006, 2005-2006?

17 A. Yes.

18 Q. And he was also one of the people who had been in the
19 leadership group of what we called yesterday ARS, the
20 reconciliation -- the reliberation, we'll call it the
21 reliberation movement; is that a fair --

22 A. Yes.

23 Q. -- description?

24 A. That's correct.

25 Q. Is it hard to keep track of where people are in terms of

1 their affiliations in Somalia?

2 MS. HAN: Objection.

3 THE COURT: Sorry?

4 MS. HAN: Objection.

5 THE COURT: The ground for the objection, please.

6 MS. HAN: Vague as to --

7 THE COURT: -- time?

8 MS. HAN: Yes.

9 THE COURT: Sustained.

10 BY MR. DRATEL: Q. Over the course of your
11 experience in Somalia, and whether it's from 2005 to 2008,
12 2005 to 2011, 1991 to 2013, is it difficult sometimes to
13 determine precisely people's affiliations at a particular
14 point in time? When I say people, I mean leadership, I mean
15 people who are public figures.

16 A. I don't think I'd say it's difficult. I'd say that
17 Somalia is characterized by fluid allegiances, shifting
18 alliances, and sometimes people have more than one. It's
19 complex, but it's not really difficult to establish.

20 Q. Well, is it -- is it difficult to establish when
21 precisely people change?

22 A. That -- that really depends. It's hard to answer.
23 Sometimes it's a very public and clear shift of allegiances,
24 sometimes it's something that takes place over time.

25 Q. Sometimes it's public and sometimes it's not, correct?

1 A. That's right.

2 Q. And sometimes you know the reasons why and sometimes
3 they're difficult to determine why someone changes
4 allegiance?

5 A. That's correct.

6 Q. It's not always transparent, right?

7 A. Right.

8 Q. And certainly not always predictable either at a
9 particular point in time?

10 A. No, not always.

11 Q. You've also had problems with al-Shabaab in particular
12 personally, correct?

13 A. Yes, I have.

14 Q. And when did that occur? If you could give us a relative
15 time frame of when your personal difficulties with al-Shabaab
16 were first generated.

17 A. That would have been 2005-6.

18 Q. And at the time there would have been problems with you
19 going to Somalia if you were targeted by al-Shabaab, correct?

20 A. Correct.

21 Q. It would have been unsafe for you?

22 A. Yes, but I did travel to Somalia at that time.

23 Q. But the International Crisis Group decided to sever
24 relationships with you as a result of the situation?

25 A. No, that's not correct.

1 MR. DRATEL: May I approach, your Honor?

2 THE COURT: You may.

3 BY MR. DRATEL: Q. Just going to ask you to read
4 what's marked as -- for identification only as Defendants' X.

5 THE COURT: And has the government seen it?

6 MR. DRATEL: Oh, I'm sorry.

7 THE COURT: Is this to refresh memory?

8 MR. DRATEL: Yes, exactly, your Honor.

9 BY MR. DRATEL: Q. Just ask you to read the part
10 that I'm going to point out to you, just that sentence. Just
11 read it to yourself, not aloud. Just going to ask you
12 whether that refreshes your recollection as to whether
13 International Crisis Group severed its relationship with you
14 based on the threat by al-Shabaab.

15 A. I understand what you're getting at. This is not
16 actually correct. I left --

17 THE COURT: Hold on, Mr. Bryden. That's not the
18 question as to whether or not that particular document or
19 writing says something or the other. The pending question is
20 whether or not that refreshes your memory as to whether there
21 was a problem with the International Crisis Group as a result
22 of your position vis-a-vis al-Shabaab.

23 THE WITNESS: Yes.

24 THE COURT: If that is not your memory, if that
25 does not refresh your memory because it's inconsistent, then

1 just indicate that is the case. Do you understand what I'm
2 saying? We're not asking that that -- the content of that
3 paper be read or come into evidence at this point.

4 THE WITNESS: That refreshes my memory, your Honor.

5 THE COURT: Okay. Next question.

6 BY MR. DRATEL: Q. It does refresh your
7 recollection?

8 A. Yes, it does.

9 Q. Oh. So the ICG, International Crisis Group, severed its
10 relationship with you as a result of the al-Shabaab threat?

11 A. The other way around. I left International Crisis Group.

12 Q. Oh, okay. As a result of that?

13 A. Yes.

14 Q. And at some point -- and you'll tell us how long just to
15 get a time frame -- but through third parties you reached an
16 accommodation with al-Shabaab, and you were able to return to
17 Somalia without a threat against you?

18 A. That was a temporary accommodation, but that's correct.

19 Q. And what do you mean by accommodation? Please describe
20 it for us.

21 A. I sent messages to al-Shabaab through the Islamic courts,
22 who took power in Mogadishu at that time, and I sought the
23 assurances of the Islamic courts that if I traveled to
24 Somalia under their auspices, then I would not be targeted by
25 al-Shabaab. I received the assurance of the court leadership

1 that I would not be targeted, and since the courts did not
2 entirely trust al-Shabaab, they assigned me bodyguards of
3 their own, including members of al-Shabaab, to ensure that
4 I -- I wasn't targeted by any other al-Shabaab members. And
5 so for one week, I visited Mogadishu under the court's
6 auspices and was safe the duration of my visit.

7 Q. Now, when you say under the court's auspices, under the
8 auspices of the Islamic courts, what do you mean by that?

9 A. That they were in control of Mogadishu at the time, so
10 they gave me permission to enter, gave me access to their
11 senior officials so I could interview them, and provided me
12 with security.

13 Q. And so essentially you had your own mini militia as
14 security?

15 A. I had two bodyguards.

16 Q. Well, you said you had court personnel and al-Shabaab
17 personnel --

18 A. That's right.

19 Q. -- as bodyguards. I want to talk a little bit about your
20 testimony yesterday, and yesterday you called Elsha Biyaha,
21 E-l-s-h-a B-i-y-a-h-a -- you called it a neighborhood,
22 right?

23 A. No, I said it's a -- it's a location outside Mogadishu.
24 It became a site for internally displaced people like --

25 Q. It's a refugee camp, right?

1 A. Yeah.

2 Q. And it has maybe two million people at one time or
3 another, right?

4 A. No, that would be an exaggeration.

5 Q. How many people would you say?

6 A. Probably at most 500,000, 600,000 people, between Elsha
7 Biyaha and Afgooye; it's a long stretch of road.

8 Q. But it's a refugee camp, right? And that's where people
9 from Mogadishu sometimes have to go due to fighting in
10 Mogadishu?

11 A. That's right.

12 Q. And is the refugee camp itself outside the realm of
13 combat or fighting?

14 A. No. It's not really a camp. People left Mogadishu and
15 settled along the road all the way to Afgooye, so for about
16 300 meters on each side of the road, there are improvised
17 shelters and thousands of people, and there are militia in
18 the camps, in the settlements, and at times there's fighting
19 into the settlements. But it's still safer -- at that time
20 it was safer than the real center of gravity of the fighting
21 in Mogadishu.

22 Q. Yes. And that's also within the time period of
23 2006-2009, that time period?

24 A. That's correct.

25 Q. Now, you've written about -- you've written a lot about

1 the Horn of Africa and Somalia in particular, right?

2 A. Yes.

3 Q. And one of the things you've written, and I quote, is
4 that the Horn of Africa, quote, is one of the poorest and
5 most conflict-prone regions of the world, close quote.

6 A. Yes.

7 Q. And you wrote that for USAID, right? If you need to look
8 at any particular documents, I'd be happy to provide them to
9 you.

10 A. It sounds familiar, but if you need me to confirm that,
11 I'd like to see it, please.

12 Q. Sure.

13 MR. DRATEL: If I may approach?

14 THE COURT: Yeah, just -- you have continuing
15 permission for that, Mr. Dratel. You don't need to ask. But
16 the government -- if you're showing something to --

17 MR. DRATEL: Oh, I'm sorry.

18 THE COURT: Yeah.

19 BY MR. DRATEL: Q. Give me time and I'll identify
20 the documents for you --

21 A. Okay.

22 Q. -- as we go through them. So if you look -- and if you
23 look at the bottom right-hand corner, there's a Bates stamp,
24 right? You see that, the GA-MB?

25 A. Yes, I do.

1 Q. Okay. So if you go to page 12 --

2 THE COURT: Have we marked this as an exhibit?

3 MR. DRATEL: I'm sorry, your Honor. I apologize.

4 It's --

5 THE COURT: You're not --

6 MR. DRATEL: -- Defendant's P for identification.

7 THE COURT: Okay. Thank you. How would you like
8 to have it described?

9 MR. DRATEL: Maybe I'll just ask Mr. Bryden.

10 BY MR. DRATEL: Q. And you wrote a report for
11 USAID October 17, 2007, right?

12 A. Yes.

13 Q. Called The Regional Implications of the Conflict in
14 Somalia?

15 A. Yes.

16 Q. And, again, this is not a public report; this was private
17 for -- confidential for USAID?

18 A. That's correct.

19 Q. So if you look at page 12 --

20 MS. HAN: Objection. Your Honor I don't believe
21 this is proper impeachment. What I understand is that the
22 witness wanted to see the document in order to confirm that
23 he'd written the statement; he wanted his recollection to be
24 refreshed.

25 THE COURT: Well, I don't know if that's the

1 purpose of this. I think the witness wanted to take a look
2 at this as I recall. And I don't know what is contained at
3 that point, but if it's a writing of this witness on a
4 particular subject that relates to direct testimony and
5 there's going to be a prefatory question or two to open up a
6 line of inquiry, I think that's appropriate.

7 MR. DRATEL: Thank you, your Honor.

8 BY MR. DRATEL: Q. So if you look at -- there's a
9 2.1. You see that? If you look at that first sentence --

10 A. Yes.

11 Q. So you wrote that the Horn of African is one of the
12 poorest and most conflict-prone regions of the world.

13 A. Yes.

14 MS. HAN: Objection.

15 THE COURT: Well, if you're going to object, I
16 would appreciate stating a ground.

17 MS. HAN: I apologize. This is improper
18 impeachment, your Honor.

19 THE COURT: The objection is overruled. You'll
20 reserve a motion to strike.

21 BY MR. DRATEL: Q. Now, in Somalia in particular
22 there are cycles of drought, correct --

23 A. Yes.

24 Q. -- which are followed inexorably by famine, right?

25 A. Often, yes.

1 Q. And in the most recent famine in Somalia, are you
2 familiar with the figures on that?

3 A. That was the famine last year?

4 Q. Yes.

5 A. Yes, I am.

6 Q. Tens of thousands of people died?

7 A. Correct.

8 Q. Half of the children in Somalia were considered acutely
9 malnourished?

10 MS. HAN: Objection, relevance.

11 THE COURT: Sustained as to both time and region.

12 We need to confine the inquiry at this point, Mr. Dratel, to
13 the area we're talking about, Somalia, and the general time
14 frame we're talking about that the charges relate to.

15 BY MR. DRATEL: Q. So in Somalia in 2006-2008
16 period, there was also a drought as well, right?

17 A. There was also a drought.

18 MS. HAN: Objection.

19 THE COURT: Sorry?

20 MS. HAN: Your Honor, I'll withdraw the objection.

21 THE COURT: All right. And if your plan is to
22 continue objecting to this line of inquiry, I would continue
23 to --

24 MS. HAN: No, your Honor.

25 THE COURT: -- sustain the -- overrule the

1 objections.

2 MS. HAN: No, your Honor. That's obviously not my
3 plan.

4 THE COURT: All right. All right.

5 BY MR. DRATEL: Q. And the droughts in Somalia, to
6 the extent that they cause famine, have a particular impact,
7 a negative impact on children's nourishment, right?

8 A. When they do, yes.

9 Q. And that included the 2006 to 2008 drought, right?

10 A. That's correct.

11 Q. And Somalia has also suffered from 1991 through 2006 and
12 then 2006 to 2008, but that whole period suffered a
13 significant number of deaths from the armed conflict itself?

14 A. That's right.

15 Q. And the armed conflict, as you noted in 1993 and again
16 later on as well, it is correct that sometimes the armed
17 conflict prevented humanitarian aid from reaching its
18 intended recipient?

19 A. That's correct.

20 Q. And all of this conflict in Somalia and the
21 famine/drought issue creates a lot of orphans, right?

22 A. Yes, that's right, although the Somali definition of
23 orphan is somewhat different possibly from the western.

24 Q. Right. And is it based somewhat on the Islamic
25 definition of orphan?

1 A. I'd say it's more of a cultural definition than a
2 religious one.

3 Q. Okay. And what's the cultural definition?

4 A. It can be a child who's lost only one parent.

5 Q. And in Islam orphans have a special position, correct?

6 A. That's correct.

7 Q. Because Mohammed was an orphan, right? And it's a
8 particular --

9 THE COURT: I didn't hear an answer to that. Was
10 the answer affirmative or not?

11 THE WITNESS: That's affirmative.

12 BY MR. DRATEL: Q. And it's a particularly
13 important element of the charitable obligation of a Muslim to
14 care for orphans, correct?

15 A. Correct.

16 Q. Sometimes you've -- and here yesterday you didn't refer
17 to it that much, but you did talk about what -- well, if we
18 can call the Ethiopian/Somali regional state, right?

19 A. Yes.

20 Q. And that is a portion of Ethiopia in which Somalis live,
21 ethnic Somalis, right?

22 A. That's right.

23 Q. And to a certain extent, that has created issues in the
24 Horn of Africa, correct?

25 A. That's a -- has been a contested region, yes.

1 Q. And I just wanted to lay that out because when you wrote
2 that October 17 report to USAID, you took the position,
3 quote, by mid September 2007, all three crises -- Somalia,
4 the Ethiopian/Somali regional state, and Ethiopia/Eritrea --
5 appeared to be in escalatory phases threatening a general
6 increase in tension and violence across the Horn of Africa.
7 Do you need to see that or do you --

8 A. No, I recall that.

9 Q. And just with respect to Ethiopia/Eritrea, they also have
10 had tension between those two countries, correct?

11 A. Correct.

12 Q. Historically?

13 A. Yes.

14 Q. In fact, essentially Eritrea was essentially carved out
15 of Ethiopia through a war of rebellion --

16 A. That's right.

17 Q. -- about 30, 35 years ago?

18 A. And gained independence in 1993.

19 Q. We talked -- you talked yesterday about the Somali
20 diaspora, right?

21 A. Yes.

22 Q. And it's not a Somali word, right?

23 A. No.

24 Q. It's been used to describe other communities that have
25 been spread across the globe essentially?

1 A. Yes.

2 Q. And you told USAID in 2007, right, in that report, quote,
3 members of the Somali diaspora tend to identify closely with
4 events in the homeland and are amongst the most active
5 Internet communities.

6 MS. HAN: Objection.

7 THE COURT: All right. Let me see counsel at the
8 side of the bench here just so we can get this one issue
9 cleared up and then hopefully move along smoothly.

10 (Following is a sidebar conference.)

11 THE COURT: Okay. We got everybody here. Let me
12 allay any concerns. I don't have the flu, it's just --

13 MR. DURKIN: Very happy to hear that.

14 THE COURT: I don't, so we can gather a little bit
15 closer. I'm just fighting a little something else, so I'm
16 sure you're fine. On the point here, I understand -- I
17 understand the spirit of your objection here that this is
18 improper cross-examination because prior writings are being
19 used before there's any inconsistency that's been developed
20 in the testimony. Technically Ms. Han is correct. What I
21 would suggest you do -- so we don't have a number of
22 objections and nobody gets too much heartburn here -- is ask
23 the question. In other words, if there's a piece of
24 information in the report that you want to have the witness
25 testify, ask the question. Just don't refer to the report.

1 Ask the same question. If the answer is in any way different
2 than what's in the report, then you can use the report.

3 MR. DRATEL: Here's my purpose and my methodology,
4 which is -- I think I eliminated two questions from every
5 series, so -- to make it faster. In other words, to say do
6 you agree with this. Essentially it's an expert; I'm getting
7 his opinion. He's already expressed his opinion. All I'm
8 just doing is confirming it. I would also like to be able to
9 say -- which I believe I am with an expert -- that you have
10 rendered this opinion before in writing. So I'm just trying
11 to cut all the -- all the other questions.

12 THE COURT: That's why technically Ms. Han is
13 correct. I think just for purposes of just the fluidity of
14 the examination, the approach you've taken is a very
15 practical approach. I don't see any abuse of the witness or
16 problems with the substance of the cross-examination. So
17 unless you truly have a problem and want to be absolutely
18 technically correct according to Hoyle, then I think we can
19 allow Mr. Dratel to continue on and in the approach he's
20 using.

21 MS. HAN: Of course, your Honor.

22 MR. DRATEL: Okay. Thank you.

23 (Sidebar conference concludes.)

24 MR. DRATEL: May I proceed, your Honor? Thank you.

25 BY MR. DRATEL: Q. Just read it again. Members of

1 the Somali diaspora tend to identify closely with events in
2 the homeland and are among the most active Internet
3 communities. The diaspora is also a critical source of
4 political and financial support for activities in Somalia,
5 sending between \$500 million and \$1 billion every year back
6 to their homeland.

7 A. Yes.

8 Q. Correct? And you wrote that to USAID?

9 A. Yes.

10 Q. And you've also -- and it's also true that the
11 distinction between Somalis in Somalia and Somalis in the
12 diaspora is exceptionally blurred?

13 A. I think that's fair, yes.

14 Q. And you said that as well in a separate report to the
15 UN --

16 A. Yes.

17 Q. -- right? And also that links between the diaspora and
18 Somalia itself are very active?

19 A. Correct.

20 Q. You testified to that --

21 A. Yes.

22 Q. -- right? You talked about some websites yesterday from
23 your testimony. There are other websites as well, correct,
24 that are used by Somalis; they use a variety of different
25 websites, correct?

1 A. Hundreds.

2 Q. Somalis are essentially starved for news about Somalia,
3 Somalis in the diaspora, right?

4 A. I wouldn't --

5 Q. They'll go wherever they can get it?

6 A. -- say starved.

7 Q. Yes. I'm sorry.

8 A. Hungry for it.

9 Q. And there are a whole range of websites, correct?

10 A. Correct.

11 Q. And a whole range of why people might be on any
12 particular website? In other words, there's a whole range of
13 reasons why anyone might access a particular website --

14 A. Of course.

15 Q. -- right? There are also forums, online forums, correct?

16 A. Correct.

17 Q. And you monitor some of these forums, right?

18 A. Correct.

19 Q. And you monitored them 2006 to 2008?

20 A. 2007-2008.

21 Q. And Dawatawhiid Paltalk is one that you monitored?

22 A. Dawatawhiid, yes.

23 Q. That's d-a-w-a-t-a-w-h-e-e-d P-a-l-t-a-l-k. Or would
24 you -- I see that you may have an --

25 A. It's "ii" instead of "ee."

1 Q. Okay. And by the way, just the word "da'wa," just da'wa,
2 d-a-w-a with an apostrophe in the middle, you mentioned the
3 first day.

4 A. Yes.

5 Q. You mentioned yesterday about a da'wa wing of al-Shabaab?

6 A. Right.

7 Q. And da'wa itself, aside from al-Shabaab, exists in Islam,
8 correct?

9 A. Yes.

10 Q. Very important part of Islam?

11 A. Correct.

12 Q. One of the five pillars of Islam essentially?

13 A. Yes.

14 Q. So all across the entire spectrum of Islamic practice,
15 da'wa exists?

16 A. Correct.

17 Q. Now, when you were -- and you mentioned yesterday that
18 al-Shabaab in particular solicits money on these online
19 forums?

20 A. That's correct.

21 Q. And you had mentioned that Roobow does as well, right,
22 Mr. Roobow, Mukhtar Roobow, M-u-k-h-t-a-r --

23 A. Yes.

24 Q. R-o-b-o-w, right? And is it also true that someone named
25 Mahad Karate, M-a-h-a-d, last name K-a-r-a-t-e, also

1 solicited funs on Paltalk?

2 A. That's correct.

3 Q. Now, do you know a gentleman in Somalia named Abukar
4 Suryare?

5 A. Suyare.

6 Q. Abukar Dahir Mohamed is his given name.

7 A. That doesn't ring a bell.

8 Q. Showing you what's been marked as Defendant's Y for
9 identification and just ask you if you recognize that.

10 A. No, I don't recognize this gentleman.

11 (Exhibit No. Y identified.)

12 MR. DRATEL: One moment, your Honor.

13 BY MR. DRATEL: Q. You know the minister of
14 education in Somalia?

15 A. The current minister?

16 Q. Yes.

17 A. I haven't met him, no.

18 Q. Under Sheik Sharif, under the TFG --

19 A. I don't recall --

20 Q. -- recently.

21 A. -- who it was.

22 Q. You also testified yesterday a little bit about kunyas,
23 k-u-n-y-a?

24 A. Yes.

25 Q. A type of nickname?

1 A. Yes.

2 Q. And there's a difference between a kunya and a nickname
3 to a certain extent in the Shabaab context, right?

4 A. I would say so, yes.

5 Q. And that an Abu name is essentially a nom du guerre for
6 al-Shabaab?

7 A. That's right.

8 Q. Whereas an Abu name generally among persons, either among
9 Muslims or Arabs, could be simply, as you described
10 yesterday, just father of, or Abu, and then something
11 descriptive about the person such as a place where they're
12 from or what they do for their job or things like that?

13 A. I don't think I'd make any assertions about Arabic
14 culture because it's outside my area of expertise beyond the
15 way it's imported and used in Somali society.

16 Q. But it can be -- in other words, it's a different concept
17 for al-Shabaab than it is for ordinary Somalis, the Abu
18 names?

19 A. It's not common practice among Somalis who are not part
20 of Islamist movement.

21 Q. Now, you're familiar with clans, subclans, right?

22 A. Up to a point. Not infinitely, but yes.

23 Q. You familiar with the Sheekhaal clan?

24 A. Yes, I am.

25 Q. And that's a Hawiye clan?

1 A. Yes.

2 Q. And the Habar Gidir?

3 A. It's not Habar Gidir. The Habar Gidir is a Hawiye clan,
4 yes.

5 Q. Yes. But it's on the same level as a Habar Gidir in the
6 sense of a subclan below the --

7 A. Roughly, yes.

8 Q. Yeah, the Hawiye.

9 A. Yes.

10 Q. In the second level essentially.

11 A. As part of the hirab (phonetic), yes.

12 Q. Want to talk about your time line yesterday, Government's
13 Exhibit 28. Obviously that time line didn't capture a lot of
14 things that happened in Somalia during that period, right,
15 from 1960 to 2008 and --

16 THE COURT: Well, that -- are you agreeing? I
17 didn't hear an answer.

18 THE WITNESS: I would agree, it's not a
19 comprehensive time line.

20 BY MR. DRATEL: Q. And one thing that wasn't on
21 there was a prior Ethiopian invasion of Somalia in 1997,
22 correct?

23 A. '96-'97, yes.

24 Q. And there was fighting at that time too between Ethiopian
25 troops and Somalis, correct?

1 A. Yes, although it was very limited; it was just the border
2 region and part of Gedo region.

3 Q. But it wasn't the government fighting the Ethiopians, it
4 was the local -- the local population fighting?

5 A. It was al-Itihaad al-Islam.

6 Q. Right. But it wasn't the government?

7 A. But there was no government.

8 Q. Right. So essentially irregulars fighting against
9 Ethiopian government --

10 A. That's right.

11 Q. -- forces? And there was a prior war in 1977 I think you
12 referred to --

13 A. That's right.

14 Q. -- yesterday just passing through over border issues,
15 correct?

16 A. No, the '77 war was because Somalia invaded the
17 Ethiopian/Somali region, the Ogaden, in order to annex it.

18 Q. Right. I'm saying to gain territory, correct?

19 A. Yes.

20 Q. Yes. And that territory's always been disputed in one
21 form or another between Somalia and Ethiopia?

22 A. Correct.

23 Q. And, in fact, because some it is desolate and a desert,
24 there's not a truly demarcated border like there is in many
25 other parts of the world?

1 A. That's correct.

2 Q. Now, the Galgaduud region -- a substantial part of the
3 Galgaduud's western -- withdrawn. The western border of
4 Galgaduud is Ethiopia, correct? It borders on Ethiopia?

5 A. That's right.

6 Q. And also in terms of the time line, just --

7 MR. DRATEL: Thank you. I appreciate the
8 government's assistance. This is 2-A. If -- may I ask
9 Mr. Bryden to come down, your Honor?

10 THE COURT: You certainly may.

11 BY MR. DRATEL: Q. So I'll hold this. So this is
12 Galgaduud right here? I'm pointing to the region.

13 A. Correct.

14 Q. Galgaduud, right? And this line right here with my
15 finger I am pointing to is the border with Ethiopia?

16 A. It is, as it says here, a provisional administrative
17 line. It's not actually a border. It's never been agreed.

18 Q. Right. Okay. But on this side's really Ethiopia --

19 A. That's right.

20 Q. -- and as the map indicates. And Guraceel is in
21 Galgaduud, right?

22 A. Yes, it is.

23 Q. But it's not on the government's map?

24 A. No.

25 Q. Now, between 1991 and 1999 there were efforts to

1 constitute a central government for Somalia, correct?

2 A. Correct.

3 Q. There were about a dozen internationally sponsored
4 conferences designed to achieve national reconciliation?

5 A. That's about right.

6 Q. And none produced an accord that lasted?

7 A. Correct.

8 Q. You talked yesterday a little bit about 1993 in Somalia,
9 in particular what was described as the Black Hawk Down, and
10 you said there were a thousand Somali casualties. How many
11 deaths among those casualties?

12 A. That was -- there was never an official death toll. The
13 International Committee of the Red Cross made some estimates
14 in the hundreds, but I don't think anyone knows for sure.

15 Q. And you were asked about this gentleman yesterday,
16 correct?

17 A. I can't see.

18 Q. If you look --

19 A. Yes.

20 Q. That's Abdi Qeybdiid, right?

21 A. That's right.

22 Q. And here he's in a suit and a tie, right?

23 A. Yes.

24 Q. In fact though, in that Black Hawk Down incident, he was
25 captured by U.S. forces, correct?

1 A. That's right.

2 Q. He was a lieutenant for Aideed, the warlord who the U.S.
3 was trying to capture that day?

4 A. That's right.

5 Q. And that's his name, right?

6 A. Yes, it is.

7 THE COURT: Which exhibit number was that?

8 MR. DRATEL: Oh, I'm sorry. 22, your Honor,
9 Government's 22.

10 THE COURT: Thank you.

11 BY MR. DRATEL: Q. Now, he was also -- Mr. Abdi
12 Qeybdiid -- let me put it back so we know what we're talking
13 about. It's -- well, we'll mark it as Defendants' Z?

14 THE COURT: What's that, just the name?

15 MR. DRATEL: It's just the name.

16 THE COURT: Well, I don't think we need to do that.

17 MR. DRATEL: I'll just use it.

18 THE COURT: That's fine. If you just want to -- if
19 you just want to put the name up, that's fine.

20 MR. DRATEL: Thank you, your Honor.

21 BY MR. DRATEL: Q. And so he was also arrested by
22 and imprisoned by Sweden at one point for war crimes charges?

23 A. A complaint was made against him. I don't recall if he
24 was actually arrested.

25 Q. He was detained in Sweden though?

1 A. I'm not sure.

2 Q. Well, you talked about a Swedish journalist being killed
3 in Somalia during 2006. Wasn't there some discussion about
4 whether -- not yesterday I mean, but at the time -- that the
5 journalist had been killed in retaliation -- by Abdi
6 Qeybdiid's forces in retaliation for the Swedish prosecution?

7 A. I'm -- I'm aware that that was posted in a few websites.
8 That was never seriously considered, to the best of my
9 knowledge, in Mogadishu because of the circumstances of the
10 killing where there was no -- it was virtually inconceivable
11 that Abdi Qeybdiid's militia would have been present at the
12 time.

13 Q. Well, isn't it true that militias often farm out work
14 outside their area to other militias?

15 A. Yes, but this journalist was killed at an event that was
16 purely a Islamic court/al-Shabaab event.

17 Q. But the answer is yes, that sometimes militias farm out
18 work to other militias?

19 A. That's correct.

20 Q. And, in fact, you said the U.S. farmed out work to
21 militias?

22 A. That's correct.

23 Q. I go back to Mohammed Farah Aideed.

24 A. Yes.

25 Q. Probably the most prominent warlord in 1991, and -- is

1 that fair to say?

2 A. Yes, it is.

3 Q. And is it also fair to say that in '92 and '93 in terms
4 of the UN and the U.S.'s efforts to bring humanitarian aid to
5 Somalia and the UN's efforts at state-building, at
6 nation-building, that Aideed was considered the most
7 prominent obstacle?

8 A. That's right.

9 Q. And he was not an Islamist, correct?

10 A. Correct.

11 Q. Just a warlord, a traditional warlord?

12 A. Yes.

13 Q. And he's been dead for some time now?

14 A. That's right.

15 Q. Arms, weapons are commonplace in Somalia, right?

16 A. That's right.

17 Q. And they have been for a long time?

18 A. Yes.

19 Q. And, in fact, Somalia was one of the most -- one of the
20 best-equipped armies when -- in the Barre regime, was one of
21 the best-equipped armies in Africa?

22 A. That's right.

23 Q. They in fact have been armed first by the western powers
24 and then they switched and they were armed by the Soviets,
25 correct?

1 A. First by the Soviets --

2 Q. First --

3 A. -- then by western --

4 Q. -- sorry, first by the Soviets, then -- and so they
5 essentially had the whole marketplace.

6 A. That's right.

7 Q. And that has contributed to some extent to the level of
8 violence in Somalia since the collapse of the Barre regime?

9 A. For the -- probably about the first ten years, but after
10 that it's been new supplies.

11 Q. But with respect to USAID again, in March of 2007 -- and
12 you have that before you if you want to look at it -- but you
13 wrote to USAID that general and comprehensive disarmament is
14 neither a realistic goal nor necessary for success of the
15 transition. Do you want to look? That's at 571.

16 A. I have 571. Where on 571?

17 Q. I'm sorry. Do you see 2.3 in the middle of the page?

18 A. Yes, I do.

19 Q. First sentence.

20 A. I see.

21 Q. And if you just -- and you also wrote -- oh, withdrawn.
22 When you say transition, you mean transition to a
23 centralized -- a permanent central government?

24 A. That's right.

25 Q. Because it was the TFG, the Transitional Federal

1 Government?

2 A. Correct.

3 Q. And you also wrote that, nor is it necessarily --
4 withdrawn. Nor is it necessarily appropriate or desirable
5 for an interim government with such limited support and so
6 little time remaining in its mandate to design a permanent
7 security sector of the Somali state?

8 A. Correct.

9 Q. And part of that -- and just to -- when you say an
10 interim government, obviously transitional, but also it had a
11 specific mandate in terms of time, right?

12 A. That's right.

13 Q. And about that time it had about two and a half years
14 left in its mandate, March of 2007, almost three years?

15 A. It had one and a half years, 2004 to 2008, and it did
16 extend.

17 Q. And one of the reasons is because it wasn't a popular
18 government, right?

19 A. That's right.

20 Q. Another reason is that local authorities could also
21 provide, in some instances, better and more trusted security?

22 A. That's right.

23 Q. Now, yesterday you talked about -- you were asked about
24 al-Shabaab's tactics?

25 A. Yes.

1 Q. And distinguishing al-Shabaab's tactics from tactics
2 generally. Now, just so there's no confusing, no confusion,
3 RPGs are not limited to al-Shabaab?

4 A. No.

5 Q. Everyone who wants one essentially can get an RPG. And
6 when I say everyone, I mean militias and anyone -- the
7 regular forces?

8 A. That's right.

9 Q. And technicals, those trucks with the heavy weapons
10 mounted, those existed long before al-Shabaab, correct?

11 A. That's right.

12 Q. They were a -- probably the most distinctive feature of
13 the early '90s, right?

14 A. That's right.

15 Q. Talked about aerial support a little bit yesterday in
16 your direct?

17 A. Yes.

18 Q. In fact, the Ethiopians had a monopoly on the air as far
19 as the combatants were concerned, right?

20 A. I'm sorry?

21 Q. Somalia does not have an air force?

22 A. Correct.

23 Q. Not even helicopters or anything like that.

24 A. No.

25 Q. Now, you said combat aircraft were limited to Ethiopia,

1 but in fact other governments had surveillance aircraft?

2 A. That's correct.

3 Q. And the U.S. would be one of them?

4 A. I believe so.

5 Q. And it's quite an advantage militarily, and, you being
6 someone with military experience, it's quite an advantage
7 militarily to have control of the skies, right?

8 A. That's right.

9 Q. Now, also with respect to general level of militarism in
10 Somalia, it's also true that even NGOs, groups providing aid,
11 will sometimes hire their own security forces?

12 A. That's right.

13 Q. And they often have to pay people who are not -- they're
14 not people with licenses or licensed security guards, these
15 are irregulars as well in many respects?

16 A. That's right.

17 Q. And have you ever hired a militia for your own
18 protection?

19 A. Yes.

20 Q. And where was that?

21 A. Mogadishu principally.

22 Q. What time frame was that?

23 A. Well, if -- I'd be a little more precise and say I worked
24 with organizations that hired those militia; I didn't
25 personally hire a militia, then in 1991-92, first in

1 Hargeysa, then in Mogadishu. In 1993 many organizations were
2 armed, I traveled with many of them while I was with the
3 Canadian government. I -- really the list is too long, and
4 it's still a common practice among aid agencies in Somalia to
5 have their own militia.

6 Q. And you said you weren't involved in the actual hiring of
7 them but they were for your benefit obviously?

8 A. That's right.

9 Q. And since you didn't hire them, you don't know
10 necessarily the composition of those militia?

11 A. We would know. We would be -- one of the most important
12 things in engaging a militia is to know who they are and who
13 they're responsible to or else you can be kidnapped or killed
14 by your own militia.

15 Q. Now, Somalia, would you have called -- suffers from what
16 you called a state-building dilemma?

17 A. Yes.

18 Q. And I want to go through the state of affairs in
19 October 2007 when you wrote your report for USAID, and you
20 wrote, The reconstruction of the Somali state is both the
21 solution to the current crisis and its root cause.

22 A. Yes.

23 Q. And you described that as a paradox?

24 A. Yes.

25 Q. And you said, A paradox that has repeatedly thwarted

1 international efforts to restore peace and stability to the
2 country.

3 A. That's right.

4 Q. And you also told USAID that in your opinion the
5 challenge stems less from cultural resistance to central
6 authority of nefarious colonial legacies, as foreign
7 observers often claim, than from the essentially predatory
8 nature of the state in Somali history.

9 A. Yes.

10 Q. And just to break that down a little bit, that sounds
11 like you're saying there that -- and tell me if this is
12 correct -- that foreign observers often claim that there's
13 some sort of cultural resistance to a central state in
14 Somalia or that the legacy of colonialism, there being both
15 Italian and British colonial heritage, that that lies -- that
16 underlies the resistance to a centralized state. That's what
17 some foreign observers would say, right?

18 A. That's right.

19 Q. And your position is that rather than that being the
20 case, it's because the state, the central state in Somali
21 history, has been, in your terms, predatory. And please
22 describe what you mean by that.

23 A. Yes. What I mean is that the Somali state has typically
24 been a source of insecurity and fear for the Somali
25 population, and the abuse of authority and power; and that

1 means that whenever there's an initiative to reestablish a
2 government, Somalis look at it with great caution, often
3 skepticism, to try and identify whether this is going to be
4 another predatory state or whether it's going to be genuinely
5 one that reflects the popular will as far as possible.

6 Q. And, in fact, you extend that beyond Somalia even to
7 Ethiopia and Kenya, right?

8 A. That's right.

9 Q. That the post-colonial state in those three countries in
10 your opinion has been a primary source of insecurity and an
11 instrument of violence against the Somali community.

12 A. Yes.

13 Q. And that as a result, revival of state institutions in
14 Somalia is fraught with anxiety, tension, and violence.

15 A. Yes.

16 Q. And that's what you told USAID?

17 A. That's correct.

18 Q. I want to go back to attempts to form a central
19 government, a state essentially, in Somalia, which wasn't on
20 the time line. I want to talk about the Transitional
21 National Government, TNG. You're familiar with that,
22 correct?

23 A. Yes.

24 Q. 2000-2001 period?

25 A. Yes.

1 Q. The result of one of these international conferences,
2 right?

3 A. Yes.

4 Q. And it installed -- not in Somalia but abroad -- Abdi
5 Qasim Hassan Salad as president?

6 A. That's Abdi Qasim Salad Hassan.

7 Q. Abdi Qasim Salad Hassan --

8 A. Yes.

9 Q. -- as president. And that received some international
10 recognition, correct, in a diplomatic sense?

11 A. That's correct.

12 Q. And it also received \$50 million from Arab Gulf states to
13 try to get the ball rolling in the right direction?

14 A. I'm not sure of the figure.

15 Q. Are you familiar with Ken Menkhaus?

16 A. Yes, I am.

17 Q. Would you consider him an expert?

18 A. Yes, I would.

19 Q. Have you -- are you familiar with Somalia, State Collapse
20 and the Threat of Terrorism?

21 A. Yes, I am.

22 MR. DRATEL: May approach, your Honor?

23 THE COURT: Yes, you may.

24 BY MR. DRATEL: Q. If you could read just that
25 part there.

1 THE COURT: Have you had an opportunity to see
2 this, Mr. Cole?

3 MR. DRATEL: It's --

4 THE COURT: That's all right. Mr. Cole, if you
5 want to take a look -- I'm sorry. Ms. Han, if you want to
6 take a look, please.

7 MS. HAN: Yes, please.

8 MR. DRATEL: I've highlighted it.

9 THE COURT: This has not been marked separately as
10 an exhibit, but do you have something there you would like to
11 have marked, a particular page --

12 MR. DRATEL: I'll -- yes, I'll mark the copy.

13 THE COURT: -- or you can just follow up with
14 examination.

15 MR. DRATEL: I think it would be easier.

16 BY MR. DRATEL: Q. Would you rely as an expert on
17 Mr. Menkhaus's statement that \$50 million from the gulf
18 states was contributed to the TNG?

19 A. Yes, I would.

20 Q. And he's an academic, correct?

21 A. That's right.

22 Q. Been studying Somalia for an extraordinarily long time?

23 A. Yes.

24 Q. But, in fact, the TNG never established itself throughout
25 Somalia, correct?

1 A. That's correct.

2 Q. And, in fact, never controlled more than a portion of
3 Mogadishu even?

4 A. That's right.

5 Q. It had a two- to three-year mandate through 2002 I
6 believe or, no, 2003, right?

7 A. It had a mandate until 2004.

8 Q. And it tried to extend its mandate unilaterally?

9 A. It didn't really get the chance to try. It was aborted
10 before it really reached the end of its mandate.

11 Q. And I want to contrast that with you and talk about
12 Somaliland.

13 A. Yes.

14 Q. Somaliland is essentially the former British colony,
15 correct?

16 A. That's right.

17 Q. And that has had a functioning government for some time
18 now, right?

19 A. Correct.

20 Q. For how long?

21 A. A stable, functioning government since 1997.

22 Q. And is that one of the reasons why you lived in Hargeysa?

23 A. That's correct.

24 Q. And Somaliland in fact sometimes doesn't want to be part
25 of Somalia at all, right? It wants to be a separate state?

1 A. That's right.

2 Q. And so that demarcation line of the British and Italian
3 is more than just geographical; it's really a significant
4 difference in the way life is lived in those two places?

5 A. Yes, although the boundary itself, the territories in the
6 eastern part of Somaliland, western Puntland are contested,
7 so the boundary doesn't really obtain.

8 Q. Now, let's go back to the TFG. Installed in 2004,
9 correct?

10 A. Correct.

11 Q. And the president was Abdullahi Yusuf, correct?

12 A. Correct.

13 Q. And he's the gentleman on the upper right?

14 A. That's correct.

15 Q. Again, in a suit and a tie, right?

16 A. Right.

17 Q. In fact, a former warlord, right?

18 A. That's correct.

19 Q. And you testified once that, quote, he had a reputation
20 as a dictator and lived up to it, close quote.

21 A. Correct.

22 Q. And then you told the USAID in October of 2007, quote,
23 Opposition to the Ethiopian-backed TFG expressed itself
24 almost immediately after the TFG's inception in 2004, close
25 quote.

1 A. Yes.

2 Q. And, quote, first through a dissident group of ministers
3 and members of parliament, close quote. Right --

4 A. Yes.

5 Q. -- you told them. And then through the Islamic courts --

6 A. Yes.

7 Q. -- right? You wrote -- you told USAID that. And
8 today -- today being October 2007 when you were writing --
9 through a violent insurgency that involves a broad range of
10 opposition forces motivated by clan, nationalists, and
11 Islamic agendas. Correct?

12 A. Correct.

13 Q. So it wasn't simply al-Shabaab versus the TFG, right?

14 A. Right.

15 Q. It was really everyone against the TFG to a certain
16 extent for their own reasons?

17 A. It was a very broad-based insurgency, yes.

18 Q. And yesterday you acknowledged that there was criticism
19 of the TFG, right?

20 A. Correct.

21 Q. In fact, you've been among the most vocal critics of the
22 TFG?

23 A. That's probably fair.

24 Q. You wrote to USAID in March of 2007 that the TFG, quote,
25 seems to perceive political reconciliation -- sorry --

1 reconciliation in terms of persuasion and co-optation, close
2 quote. Right?

3 A. Right.

4 Q. And that while, quote, many civil society actors and
5 academics underscore the need for social reconciliation that
6 addresses the underlying causes of conflict. Right?

7 A. Right.

8 Q. And your opinion was that the TFG was not addressing
9 those?

10 A. That's right.

11 Q. And in addition, you have, The TFG has aggressively
12 pursued the agenda of the Somali Restoration and
13 Reconciliation Council rather than functioning as a
14 government of national unity.

15 A. That's right.

16 Q. And you -- that's what you told USAID --

17 A. Yes.

18 Q. -- in March of 2007. If you want to check, there's a
19 document called Somali Reconciliation Issues and Options for
20 Engagement. If you look at page 569, it's --

21 THE COURT: There is -- Mr. Dratel, I don't think
22 there's any question pending unless it's just the date, and I
23 don't think the witness had an opportunity to agree with you
24 that it was in March of '07.

25 MR. DRATEL: I'm sorry, your Honor.

1 THE WITNESS: I just wanted to confirm that that
2 was in fact the case, your Honor.

3 THE COURT: Okay. Sure.

4 MR. DRATEL: I was operating under eye contact.

5 BY MR. DRATEL: Q. Can you confirm that by looking
6 at paragraph 3 in 1.1, sort of from the middle down.

7 A. Yes, that's correct.

8 Q. And I mentioned something that we haven't talked about
9 before -- it wasn't in your time line -- the Somali
10 Restoration and Reconciliation Council.

11 A. Yes.

12 Q. SRRC we'll call it to keep everybody sane. The SRRC was
13 essentially a vehicle for Abdullahi Yusuf, right, and his
14 cohorts? Withdrawn. Are you hesitating because it's
15 really -- it was a vehicle for the Ethiopians?

16 A. I'm hesitating because Abdullahi Yusuf was officially not
17 a member of it, but unofficially yes, he was one of its
18 key -- key leaders.

19 Q. And in fact it was Ethiopian-backed as well --

20 A. That's correct.

21 Q. -- correct? In fact, it was created in part by the
22 Ethiopians to undermine the TNG back in the early 2000s?

23 A. That is correct.

24 Q. So this is a Somali president who's aligned with an
25 organization that was in part created by the Ethiopian

1 government to undermine the fledgling Somalia government?

2 A. That's right.

3 Q. And you described several recent measures that
4 contributed to the unpopularity of the TFG government, right,
5 declaring a state of emergency?

6 A. Yes.

7 Q. Replacing a former speaker of parliament with an SRRC
8 loyalist?

9 A. Correct.

10 Q. And contested appointments of regional and district
11 officials?

12 A. Yes.

13 MS. HAN: Objection, relevance.

14 THE COURT: Overruled.

15 BY MR. DRATEL: Q. And you also told USAID in
16 March of 2007 that, quote, The assessments of President
17 Yusuf's SRRC faction risks further narrowing the popular
18 appeal of the TFG and aggravating its internal divisions.

19 A. Yes, I did.

20 Q. So when you say internal divisions, you mean within the
21 TFG itself?

22 A. Correct.

23 Q. And you had described some of those yesterday, that there
24 was already a fissure as to where the capital would be?

25 A. That's right.

1 Q. Now, the SRRC, the leaders of SRRC, were warlords, right,
2 or former warlords?

3 A. Many of them, yes.

4 Q. And going back to the TNG, talk about Ethiopia seeking to
5 undermine the TNG, right?

6 A. Yes.

7 Q. And part of that was because of the \$50 million in aid
8 from the gulf that it thought might promote Islam in Somalia
9 and the Somalia regional state in Ethiopia?

10 A. I haven't made that case.

11 Q. Okay. Do you still have Mr. Menkhaus's book?

12 A. Yes, I do.

13 Q. If you can look at page 46.

14 MS. HAN: Your Honor, objection as to improper
15 impeachment.

16 MR. DRATEL: He's an expert, your Honor. I'm
17 asking about another expert's opinion to see whether he
18 agrees.

19 THE COURT: Well, yeah. Given the last answer,
20 that this witness hasn't reached that point yet and he
21 recognizes Menkhaus as a reliable expert in the area, I would
22 permit the question and overrule any objection. But if you
23 want to show Ms. Han where that's located --

24 MR. DRATEL: Yes.

25 THE COURT: -- Mr. Dratel.

1 MR. DRATEL: Yes. It's the middle paragraph.

2 BY MR. DRATEL: Q. If you look at the middle
3 paragraph, starting ironically I think --

4 A. Yes.

5 Q. And that's Mr. Menkhaus's position, right, that the aid
6 from gulf states made Ethiopia anxious about Islam, right?

7 A. I think I would put this in context. I'm sure somewhere
8 here Mr. Menkhaus has written about it, but this is not a
9 blanket opposition to Islam; about half of Ethiopia is
10 inhabited by Muslims. But the TNG, about one quarter of the
11 parliament was believed to represent certain Islamists,
12 Somali Islamist groups, and the group al-Itihaad, against
13 which Ethiopia had fought, was also represented in the
14 parliament. And so I would take Mr. Menkhaus's assertion
15 here that those groups backed by contributions from the Arab
16 state would represent anti-Ethiopian Islam.

17 Q. And Ethiopia as a result backed militias in Somalia to
18 limit the control that the T.N.G. could exercise in the
19 country?

20 A. That's correct.

21 Q. Going back to the TFG, Transitional Federal Government,
22 Abdullahi Yusuf's government, in March of 2007 --

23 A. Yes.

24 Q. -- told USAID, quote, International efforts to bolster
25 the TFG's authority as a government are widely perceived

1 among Somalis as entrenching President Yusuf's faction in
2 power, engendering resentment and resistance.

3 A. Yes.

4 Q. Right? And the reason for that is that among Somalis,
5 because of what you described as the predatory nature of the
6 state, one aspect of that is not only a question of violence
7 against civilians by the state but also that it's a spoils
8 operation, in other words, to divide up power and resources
9 that exist in Somalia among those in power?

10 A. That's correct.

11 Q. Now, you also wrote in March of 2007 to USAID, Ethiopia's
12 decisive military victory over the Islamic courts has
13 succeeded in muting the opposition but only temporarily.

14 Correct?

15 A. Yes.

16 Q. And you wrote that unless this political imbalance is
17 addressed, the TFG is likely to spend the remaining two and a
18 half years of its mandate consumed with domestic political
19 problems and planning a unilateral extension of office, a
20 high-risk strategy that could result in even greater military
21 and political crises.

22 A. That's right.

23 Q. You also said that under present circumstances all TFG --
24 in March of 2007 -- Under present circumstances all TFG
25 security forces are perceived by opposition groups as

1 hostile.

2 A. Yes.

3 Q. And that this is manifest in frequent attacks on police
4 forces and installations in the city of Mogadishu and
5 sporadic incidents in other locations.

6 A. That's correct.

7 Q. And this opposition that we're talking about is a broad
8 opposition that includes Islamists, clan, right?

9 A. That's right. At the time it was referred to generally
10 as Wuqalamudda (phonetic), the resistance without
11 differentiation.

12 Q. But not limited to al-Shabaab?

13 A. It included al-Shabaab, but it was the resistance.

14 Q. Much broader than al-Shabaab?

15 A. Much broader, yes.

16 Q. Included elements of the of TFG itself, right?

17 A. That's right.

18 Q. Now, the Ethiopians' occupation lasted essentially three
19 years, 2006 to 2009?

20 A. That's correct. Two years, 2007 and '8.

21 Q. Did they withdraw in March of '09?

22 A. Started to withdraw in January, even sooner.

23 Q. Now, yesterday you described -- you said that they
24 were -- that they came to Somalia at the invitation of
25 Abdullahi Yusuf?

1 A. That's right.

2 Q. Abdullahi Yusuf, whose SRRC had been backed by the
3 Ethiopians in the first place?

4 A. Correct.

5 Q. And did you write an op-ed piece that said Yusuf's
6 original appeal for 20,000 foreign troops was widely
7 perceived as an act of ventriloquism engineered from Addis
8 Ababa and aimed at putting Ethiopian boots on the ground in
9 Somalia?

10 A. Yes, I did.

11 Q. So in fact "invitation" is really a formal word, right?

12 A. Yes.

13 Q. Ethiopia was concerned about the Islamic courts expanding
14 outward from Mogadishu, correct?

15 A. Correct.

16 Q. Ethiopia also had its own regional agenda, correct?

17 A. It had other regional concerns.

18 Q. Yes. And one -- and the principal one is checking
19 Eritrea --

20 A. That's correct.

21 Q. -- right? And, in fact, you wrote in October 2007 to
22 USAID that Ethiopia, quote, considers opposition to the TFG
23 to be fueled by Eritrean interference, close quote.

24 A. Correct.

25 Q. And, in fact, the reliberation movement met in Asmara,

1 right?

2 A. That's right.

3 Q. And another reason for Ethiopia to put troops in Somalia
4 had to do with its own border area, the -- with rebel groups
5 that were not Somali necessarily but were located in areas
6 close to Somalia, correct?

7 A. That's right.

8 Q. Ogaden National Front, National Liberation Front --

9 A. That's --

10 Q. -- Oromo organizations?

11 A. Right.

12 Q. That's O-r-o-m-o. And also containing the
13 Ethiopian/Somali region state, right?

14 A. That would be equivalent to managing the Ogaden National
15 Liberation Front.

16 Q. And you wrote in October of 2007 in your confidential
17 memo to USAID, quote, Ethiopian intervention in Somalia has
18 triggered a persistent and escalating insurgency.

19 A. Yes.

20 Q. And that, quote, Ethiopian -- Ethiopia's intervention in
21 Somalia has degenerated into a violent and costly occupation
22 for which the United States is widely held to be responsible.

23 A. Yes.

24 Q. And in that context you wrote in October 2007 that
25 Ethiopia, quote, accentuates the threat of terrorism in order

1 to secure international, especially American, support.

2 A. That's right.

3 Q. Right? And that's because in your opinion the U.S. has
4 essentially looked at Somalia for a long time or at the
5 period of time we're talking about, viewed Somalia only in a
6 counterterrorism context, or principally --

7 A. Principally.

8 Q. -- predominantly can we say?

9 A. Yes, I think that's fair.

10 Q. And you criticized the United States for only
11 contributing \$250,000 to the TFG initially?

12 A. I said other donors criticized the United States for
13 that.

14 Q. Yes, okay. Other donors criticized, right. And you
15 thought the U.S. should have a broader outlook on Somalia in
16 that regard?

17 MS. HAN: Objection, relevance.

18 THE COURT: The objection is sustained.

19 MR. DRATEL: Your Honor, I would just note that
20 yesterday they -- the government elicited the U.S. position
21 on certain aspects of Somali politics and governments. But
22 I'll move on.

23 THE COURT: Okay.

24 MR. DRATEL: Thank you.

25 BY MR. DRATEL: Q. And you wrote in October of

1 2007, In both Somalia and the Ethiopian/Somali regional
2 state, Ethiopia has installed narrowly based compliant
3 governments that lack local legitimacy and disenfranchise
4 large segments of the population.

5 A. That's right.

6 Q. And also that armed -- quote, Armed opposition to these
7 fragile administrations means that they require Ethiopian
8 military protection and support, deepening resentment and
9 further radicalizing opposition factions.

10 A. That's right.

11 Q. Now, you also wrote to USAID in October of 2007,
12 Unfortunately Ethiopia's actions since December 2007 have
13 served neither Ethiopia nor U.S. interests.

14 A. That's right.

15 Q. And that's because no one, and particularly Somalis,
16 don't appreciate an occupying military force, right? Is that
17 one of the reasons?

18 A. One of the reasons that it didn't serve U.S. interests?

19 Q. Yes.

20 A. The main reason -- the point that I was making is that
21 U.S. interests or objectives include stabilization and
22 counterterrorism, and this policy was having the reverse
23 effect of -- in creating radicalization and instability.

24 Q. But I'm saying one of the reasons why the Ethiopian
25 military's presence in Somalia was not accepted by Somalis is

1 because it was an occupying military force; that's one of the
2 reasons why.

3 A. It's part of it, although I think at that time the fact
4 that it was in support of the TFG and that particular
5 leadership was a bigger problem. Ethiopia has at other times
6 had forces in Somalia or in other parts of Somalia at that
7 time which have not been resisted. It was really the agenda
8 that they were pursuing in support of the TFG that was the
9 problem.

10 Q. And another reason why it was unpopular is because
11 Ethiopia was blamed for certain civilian deaths as well?

12 A. That was part of the bigger picture, yes.

13 Q. And destruction of property?

14 A. That's right.

15 Q. Diversion of resources that the population would use in
16 terms of space, buildings, water, things like that?

17 A. Not so much.

18 Q. But interference with local administration on a certain
19 level?

20 A. By supporting the TFG.

21 Q. And also an historic antagonism between Somalia and
22 Ethiopia, correct?

23 A. That's correct.

24 Q. Now, the TFG held a conference in July and August of
25 2007, correct?

1 A. Yes.

2 Q. Again, not in your time line from yesterday?

3 A. Right.

4 Q. And they called that the National Reconciliation
5 Congress, correct?

6 A. That's right.

7 Q. And your report to USAID was that it served mainly as a
8 forum for TFG supporters, correct?

9 A. That's right.

10 Q. That no major opposition figures attended?

11 A. Correct.

12 Q. That many clan leaders stayed away?

13 A. That's right.

14 Q. And that the conference made little progress towards
15 national reconciliation?

16 A. Correct.

17 Q. And you wrote to USAID in October of 2007, quote, TFG has
18 so far shown no interest in sharing power or in advancing the
19 transitional process.

20 A. Correct.

21 Q. And you envisioned a more broadly based TFG, correct?

22 A. I argued that the TFG's success depended on it becoming
23 more broadly based.

24 Q. Right. And that would include some anti-Ethiopian
25 leaders, right?

1 A. Correct.

2 Q. And even including Islamists or Islamists, however you
3 wish to pronounce it?

4 A. Correct.

5 Q. That's because not all Islamists are al-Shabaab, right?

6 A. Correct.

7 Q. And not all Islamists are terrorists?

8 A. Correct.

9 THE COURT: Anytime you're at a convenient breaking
10 point, Mr. Dratel.

11 MR. DRATEL: One just one more and then we can
12 break.

13 BY MR. DRATEL: Q. And, in fact, in your ICG
14 report you wrote on the Islamists in Somalia that they are a
15 diverse community characterized more by competition and
16 contradiction than cooperation, correct?

17 A. Correct.

18 MR. DRATEL: Thank you, your Honor. This would be
19 a good time.

20 THE COURT: Okay, ladies and gentlemen. We'll take
21 our midmorning recess at this time. And please gather back
22 outside the courtroom in 15 minutes and then we'll call you
23 back in. Remember the admonition. Thank you.

24 (There was a break in the proceedings.)

25 THE COURT: All right. Everyone is present. Mr.

1 Dratel?

2 MR. DRATEL: Thank you, your Honor.

3 BY MR. DRATEL: Q. Mr. Bryden?

4 A. Yes.

5 Q. Again I want to return to something that you touched on
6 yesterday about the formation of what is called the ARS, the
7 Alliance for Reliberation of Somalia, and we'll call it ARS
8 or the reliberation movement.

9 In September 2007 there was a conference in Asmara,
10 Eritrea, for the purpose of forming this alliance, right?

11 A. That's right.

12 Q. And there were members of the TFG parliament, right?

13 A. Yes.

14 Q. Which is called the Transitional Federal Parliament but
15 it's essentially part of the TFG government, sort of
16 breakaway elements of even the TFG present?

17 A. Yes.

18 Q. And political activists from Somalia -- from Somalia
19 itself and from the Somali diaspora?

20 A. Yes.

21 Q. And elements of the Islamic courts as well?

22 A. That's right.

23 Q. And you described it as an umbrella movement based on a
24 platform of resistance to Ethiopian occupation, right?

25 A. That's right.

1 Q. That's what you told USAID in October of 2007?

2 A. Yes.

3 Q. And you also said that, quote, Not surprisingly, the ARS
4 insisted upon complete Ethiopian withdrawal from Somalia as a
5 precondition to any political dialog.

6 A. Yes.

7 Q. And that, quote, The establishment of the opposition ARS
8 seems likely to attract greater resources and an enhanced
9 military capacity on the ground.

10 A. Yes.

11 Q. And by that you meant in opposition to the TFG?

12 A. That's right.

13 Q. And opposition to the Ethiopian military?

14 A. Yes.

15 Q. You also wrote in October 2007 to USAID, quote, The
16 friction between the TFG president and prime minister could
17 manifest itself through contested political appointments,
18 militia clashes, and unclaimed assassinations. Right?

19 A. Yes.

20 Q. And so that's the TFG fighting itself essentially?

21 A. That's right.

22 Q. And the prime minister and the president are two
23 different people we're talking about?

24 A. Yes.

25 Q. Each with their own personal militias essentially?

1 A. The prime minister actually didn't have a militia, but
2 he -- his supporters could have mobilized that kind of
3 support.

4 Q. And unclaimed assassinations within that -- within that
5 internal TFG dispute itself; that's what you were concerned
6 about?

7 A. Yes.

8 Q. We're talking about the two top officials of the TFG
9 there?

10 A. That's right.

11 Q. And did there come a time that the Ethiopians were
12 finally of the opinion that there needs to be a dialog, that
13 the government had to talk to particularly some of the clans
14 who were supporting the insurgency, parts of the Hawiye clan?

15 A. Yes.

16 Q. And that ultimately -- when was that would you say?

17 A. It's hard to say. I don't know when the Ethiopians
18 reached the decision, but they seemed to be leaning that
19 direction during the second half of 2007, and certainly by
20 the beginning of 2008, they passed that decision point.

21 Q. So they finally withdraw in 2009?

22 A. That's right.

23 Q. And in 2009 Abdullahi Yusuf, the president of the TFG,
24 was replaced by Sheik Sharif Ahmed?

25 A. That's right.

1 Q. Sheik Sharif Ahmed, who had been the head of the Islamic
2 courts at one point?

3 A. Yes.

4 Q. And then had been affiliated with ARS, the reliberation
5 movement?

6 A. Yes.

7 Q. He became the head of the Somali central government?

8 A. That's right.

9 Q. And not by a violent overthrow, correct?

10 A. Correct.

11 Q. And that occurred in collaboration with -- withdrawn.
12 The replacement of Abdullahi Yusuf by Sheik Sharif Ahmed was
13 in collaboration with a number of elements of the opposition,
14 correct?

15 A. I'm not sure I understand.

16 Q. The replacement of Abdullahi Yusuf by Sheik Sharif Ahmed
17 was done by the endorsement, let's say, of various elements
18 of the opposition?

19 A. I wouldn't say that's the case. The ARS, his wing of the
20 ARS, accompanied Sheik Sharif into the process, but other
21 opposition movements would generally be negative about that,
22 that decision.

23 Q. Now, yesterday you said that the U.S. welcomed the TFG in
24 2004, right?

25 A. That's right.

1 Q. And, in fact, the U.S. didn't formally -- formally --
2 recognize Somalia until only a couple of weeks ago?

3 A. If I may, my understanding is the U.S. doesn't actually
4 recognize governments, it recognizes states. It entered into
5 diplomatic relationship with the Somali government for the
6 first time a few weeks ago. The previous governments were
7 all interim governments.

8 Q. So it's a yes in terms of recognition, diplomatic
9 recognition?

10 A. Yes.

11 Q. You also spoke yesterday about hawalas, right?

12 A. Yes.

13 Q. And, again, because the jury is hearing this perhaps for
14 the first time about hawalas --

15 A. Yes.

16 Q. -- that's a money exchange business, right?

17 A. Money transfer.

18 Q. Money transfer.

19 A. Yes.

20 Q. Between principally, in this context, between Somali
21 diaspora and Somalia itself?

22 A. That's right.

23 Q. And many people send money to family members, to other
24 institutions in Somalia, correct?

25 A. Yes.

1 Q. And you talked about different types of hawalas?

2 A. Right.

3 Q. Some of which are large operations, some of which are
4 smaller or which are called informal?

5 A. Correct.

6 Q. Amal is a large one, right?

7 A. That's right.

8 Q. Multinational operation?

9 A. Yes.

10 Q. Based in Dubai --

11 A. Yes.

12 Q. -- right? And offices in various different countries
13 throughout the world?

14 A. That's right.

15 Q. Not an informal hawala at all?

16 A. Actually it's both. It has a formal side, and it also
17 uses informal agents all over the world where it's not
18 registered.

19 Q. Where it's not registered, okay. And there are hawala
20 registration requirements in the United States now, right?

21 A. That's right.

22 Q. Strict ones?

23 A. Yes.

24 Q. And Global was another one that you mentioned; that's a
25 large one, right?

1 A. Yes.

2 Q. Do you know a gentleman by the name of Farah Yare,
3 treasurer of Global, Farah Shidane?

4 A. I know the name. I didn't know the gentleman.

5 Q. Did you know him as the treasurer of Global?

6 A. Not as the treasurer, as a senior financial officer.

7 Q. At Global, a multinational hawala?

8 A. I'm not sure I would -- would have said he worked for
9 Global. I think I knew him in another capacity, another
10 hawala.

11 Q. But as a senior financial officer?

12 A. Yes.

13 Q. Want to ask about something that wasn't part of your
14 direct and not on your time line, al-Shabaab and an
15 organization called al-Sunns Wal Jamaa.

16 A. Yes.

17 Q. And we'll try to create a spelling. Al-Sunna being
18 al-Sunna, S-u-h-n-a?

19 A. S-u-n-n-a.

20 Q. Okay. S-u-n-n-a. Wa, w-a or w-a-a? Which would you
21 prefer?

22 A. W-a.

23 Q. Okay. Jamaa, j-a-m-a-a?

24 A. I'll go with that, but there's an L missing, wal, w-a-l.

25 Q. W-a-l. So al-Sunna wal jamaa, a Somali organization --

1 A. Yes.

2 Q. -- right? And you've described it as an umbrella
3 organization for various elements, right?

4 A. Sorry. As a what?

5 Q. As an umbrella organization for various elements in
6 Somalia.

7 A. Yes.

8 Q. Clan interests, Sufis, right?

9 A. Yes.

10 Q. Let's stop there because there's a first, we're talking
11 about Sufis. There are different branches of Islam, right?

12 A. Correct.

13 Q. There is -- there are schools of Islam effectively,
14 right?

15 A. Yes.

16 Q. And in some ways, not completely analogous but just
17 analogizing it to let's say Christian denominations, right?
18 They're somewhat analogous to different Christian
19 denominations, right?

20 A. I'd agree with that.

21 Q. And Sufi is a particular school, right, of Islam or a
22 particular doctrine of Islam?

23 A. It's a form of practicing. It's not one of the major
24 schools, but it's a -- in the Somali context, it's a subset
25 of a school.

1 Q. And there are a fair number of Sufis in Somalia, correct?

2 A. Traditionally most Somalis are Sufis.

3 Q. And Sufis are generally -- well, not generally, but let's
4 say Sufis are generally less puritanical than some other
5 Islamists that perhaps people are -- hear more about in the
6 news?

7 A. Generally but not entirely. There are some very
8 puritanical Sufi orders.

9 Q. But -- and what school are the -- is Shabaab?

10 A. It's not one of the Sufi orders, it's --

11 Q. Right, but what school, or they separate, if you could
12 identify it.

13 A. Salafism.

14 Q. Salafism, which is a stricter form or more puritanical
15 form, right?

16 A. Yes.

17 Q. And Shabaab is -- withdrawn. Shabaab does not tolerate
18 Sufis, correct, or Sufism?

19 A. Correct.

20 Q. And does not tolerate Sufism practices?

21 A. Correct.

22 Q. And essentially is at war with Sufis and Sufism?

23 A. Yes.

24 Q. They're looking to eradicate it from Somalia?

25 A. I believe so.

1 Q. Violently, if necessary?

2 A. Yes.

3 Q. And in fact al-Sunna -- we'll call it al-Sunna, al-Sunna
4 wal jamaa, for short. But al-Sunna has a certain Sufi
5 element to it, correct?

6 A. Al-Sunna is -- its identity is a Sufi organization.

7 Q. Okay. So we'll identify it as a Sufi organization. And
8 as a result it clashes with al-Shabaab on a regular basis?

9 A. That's right.

10 Q. And mostly over al-Shabaab's attempts to ban Sufi
11 practices, right, to abolish Sufism essentially in Somalia?

12 A. Well, they're contesting control over territory, and they
13 have these conflicting ideologies.

14 Q. And you described al-Sunna's relationship with the TFG --
15 and this is -- want to get a time frame for you -- I think
16 you have my copy.

17 MR. DRATEL: If I may just ask, your Honor.

18 BY MR. DRATEL: Q. The report on Resolution 853?
19 Should be up there.

20 A. Yes.

21 Q. When did you -- when was that issued? That's it. I
22 think that's it.

23 A. This is 20 March 2010.

24 Q. So you described al-Sunna's relationship with the TFG as,
25 quote, difficult and at times ambiguous?

1 A. Could you --

2 Q. Oh, sure. Page 12. I'm sorry. Page 13.

3 A. Just to confirm. That sounds right. Page 13?

4 Q. Yes.

5 A. Paragraph --

6 Q. I don't have it in front of me.

7 A. Okay. Difficult and at times ambiguous, yes.

8 Q. Okay. Thank you. Right. And that there have been --
9 that over the course of al-Sunna's existence, by 2009, when
10 you wrote that, it had emerged as the largest and most
11 effective government-aligned fighting force in southern
12 Somalia?

13 A. That's right.

14 Q. And it's also true that al-Sunna -- and one of the areas
15 you talked about, contested territory --

16 A. Yes.

17 Q. -- between al-Sunna and al-Shabaab, wasn't Galgaduud one
18 of those?

19 A. Yes, it was.

20 Q. I want to talk about the killing of Aden Ayrow May 1st,
21 2008, right?

22 A. Yes.

23 Q. A U.S. missile strike --

24 A. Yes.

25 Q. -- correct, from a seaborne missile essentially, right?

1 A. I believe so.

2 Q. And he had been targeted for some time by the U.S.,
3 right?

4 A. I don't know.

5 Q. You're unaware of a January 2007 incident where the U.S.
6 believed it had killed him initially?

7 A. I'm aware of a number of incidents, but at the time I
8 believed that they were targeting the foreigners in his
9 company, not Ayrow himself.

10 Q. And do you know how he was located? Do you know how he
11 was located by the U.S. in that strike that ultimately killed
12 him?

13 A. No, I'm not privy to that information.

14 Q. Now, you said yesterday that some organizations, even
15 ARS, condemned the air strike, right, the missile strike?

16 A. That's right.

17 Q. And was that because they agreed with Aden Ayrow on
18 policy?

19 A. They condemned -- I'd have to refer to their statements,
20 but many of them wouldn't have agreed with him on policy, but
21 they certainly didn't favor the strike.

22 Q. Right, because it was essentially a sovereignty issue?

23 A. No, it's because they were fighting a common enemy.

24 Q. The Ethiopians?

25 A. Yes, and the TFG.

1 Q. I'm sorry?

2 A. And the TFG.

3 Q. Now, in the course of all this conflict that exists in
4 Somalia, that's existed for a long time, citizens are often
5 caught in the crossfire, correct?

6 A. That's --

7 Q. Ordinary citizens?

8 A. That's correct.

9 Q. And it's a constant state of armed conflict that
10 transcends particular areas. In other words, it leaks into
11 many different areas of Somalia at various times?

12 A. Yes, that's right.

13 Q. Even as far north as Hargeysa sometimes?

14 A. That's right.

15 Q. And there's a local need for self-protection, right?

16 A. In many areas, yes.

17 Q. Because the government, the central government, is not
18 going to be there to protect them, right?

19 A. In southern Somalia, yes.

20 Q. Yes. And in some instances they feel the danger from the
21 central government itself?

22 A. That's right.

23 Q. I want to talk about something that I don't think you
24 touched on in your direct; if you did, very briefly. Local
25 and regional control, decentralized government, in Somalia.

1 And talk about first the Union of Islamic Courts or the
2 Council on Islamic Courts, whichever you prefer. I don't
3 know which -- I think I guess council is what you called --

4 A. Council is fine.

5 Q. Council on Islamic Courts, they were popular in the early
6 2000s, right, as they grew in number, right?

7 A. They were popular within their clan areas, their
8 neighborhoods.

9 Q. And one of the reasons they were popular is because they
10 either restored and then maintained some sense of order in
11 those places, right?

12 A. That's right.

13 Q. And they were seen as not corrupt, correct?

14 A. Correct.

15 Q. And they weren't aligned with predatory warlords in -- in
16 Somalia?

17 A. That's correct.

18 Q. And it's more than just a building and a couple of
19 people. They administered in some sense a civil society to a
20 certain extent, correct?

21 A. Not until 2006, no.

22 Q. Okay. But at some point, right? And you wrote in an
23 op-ed piece in -- sometime in 2007 that, quote, For the most
24 part, the Council of Islamic Courts has expanded into the
25 vacuum left by the TFG's inability to govern.

1 A. Yes.

2 Q. And in terms of the composition of the Council of Islamic
3 Courts -- and by that time it was a formidable organization,
4 although it had already been defeated by the Ethiopians to a
5 certain extent, correct, by mid 2007?

6 A. By mid --

7 Q. Withdrawn. Do you know when you wrote that op-ed piece?

8 A. It depends which one you're referring to.

9 Q. I will show you a copy, okay?

10 MR. DRATEL: Mark it as Defendants' AA.

11 BY MR. DRATEL: Q. I apologize. The one I had did
12 not have a date. The date is on there. You wrote it in
13 December 2006, right?

14 A. That's right, I wrote --

15 Q. You wrote it for the CSIS?

16 A. That's right.

17 (Exhibit No. AA identified.)

18 Q. Is that -- what is their formal name?

19 A. Center for Strategic and International Studies.

20 Q. A U.S.-based organization?

21 A. In Washington, yes.

22 Q. And you wrote that many mainstream court leaders -- and
23 you mean Islamic courts, right?

24 A. Yes.

25 Q. -- are religious traditionalists schooled in the general

1 moderate tenets of Somali Islamic tradition, right? I think
2 it is probably on page 2. Yes, the second paragraph.

3 A. Yes, I see it. Yes.

4 Q. And that although they support an explicitly Islamic form
5 of government informed by Sharia law, they are chiefly
6 concerned with the challenges of day-to-day governance and
7 reconstruction and are ill-at-ease with the stridency of the
8 radicals in their midst.

9 A. That's right.

10 Q. And you also said that whatever their political attitudes
11 vis-a-vis the Council of Islamic Courts, most ordinary Hawiye
12 are grateful for the peace, security, and social services
13 that the courts have restored after years of anarchy.

14 A. That's right.

15 Q. Now, in terms of regional control generally, leaving
16 aside the courts, the Council of Islamic Courts, you have
17 been in favor of regional and local administration, right?

18 A. Yes.

19 Q. I think you called it a building block approach to
20 stability, correct?

21 A. That's one form of it, yes.

22 Q. And you've written that -- you told USAID in March of
23 2007 that regional and local administrations provide
24 representative governance at the regional and district
25 levels, right, and that it permits broader representation

1 than at the national and can exert an important moderating
2 influence on disaffected clans and communities.

3 A. That's right.

4 Q. And that another reason for regional and local
5 administration was, as you wrote, quote, A minimum level of
6 local governance is also necessary in order to provide the
7 minimum conditions (security, administrative capacity, et
8 cetera) for implementation of transitional tasks. Right?

9 A. Yes.

10 Q. So, in other words, security would be on a local level,
11 right?

12 A. Yes.

13 Q. And just so we're clear, in terms of security not only
14 from organized groups that are armed but there was also a lot
15 of banditry, right, in Somalia generally in these areas that
16 were not controlled by governments?

17 A. That's correct.

18 Q. And ordinary citizens and even police units could be
19 under attack by ordinary criminals, bandits, who were heavily
20 armed?

21 A. That's right.

22 Q. And one way to achieve local security, you said, was to
23 create community confidence in local and national
24 authorities, right?

25 A. That's right.

1 Q. And, in fact, during the periods of anarchy in the '90s
2 particularly in Somalia and then through towards the end of
3 the '90s into the early 2000s, these local administrations
4 were perhaps the only effective governing mechanisms in
5 Somalia, correct?

6 A. That's correct.

7 Q. And the only civic institutions that the local populace
8 could rely on for civil society operations that we take for
9 granted here?

10 A. Generally yes, but I would have to also add the business
11 community offered a lot of public services that would
12 normally be public were privatized.

13 Q. And also protection as well, in other words, security
14 protection that we discussed before?

15 A. In some places, yes.

16 Q. Now, we talked -- we've talked about drought and famine,
17 and there's a significant humanitarian need in Somalia,
18 correct?

19 A. That's correct.

20 Q. And that's regardless of whether there's drought and
21 famine, correct?

22 A. That's right.

23 Q. Drought and famine only make it much worse, right?

24 A. That's right.

25 Q. And you've seen children in a state of malnutrition?

1 A. Yes, I have.

2 Q. Can you describe that for us?

3 MS. HAN: Objection, relevance.

4 THE COURT: The objection is sustained.

5 BY MR. DRATEL: Q. Breaks your heart, doesn't it?

6 THE COURT: The description --

7 MS. HAN: Objection.

8 THE COURT: Sustained.

9 MR. DRATEL: To my other question? I'm sorry.

10 THE COURT: Yeah, as to that question too.

11 MR. DRATEL: Nothing further. Thank you, your
12 Honor. Oh, one -- may I one just return to one?

13 THE COURT: Yes.

14 BY MR. DRATEL: Q. Have you heard of a website --
15 I'll spell it and then I'll say it. W-a-r-k-a-d-a-l-k-a dot
16 com, Warkadalka?

17 A. I'm sorry. I didn't --

18 Q. Oh, warkadalka.com.

19 A. Warkadalka. I've seen it. I haven't frequented it.

20 Q. What do you know it to be?

21 A. I don't know it to be of any special character.

22 Q. Did al-Shabaab have hit lists?

23 A. Apparently they do, yes.

24 Q. Did they publish them online?

25 A. I'm not aware. I haven't seen one online.

1 MR. DRATEL: Nothing further, your Honor. Thank
2 you.

3 THE COURT: Ms. Moreno?

4 Cross-Examination

5 BY MS. MORENO: Q. Good morning.

6 A. Good morning.

7 Q. I only have a couple questions for you. One of them is
8 geographic, one is this. Your two --

9 MS. MORENO: May I approach, your Honor?

10 THE COURT: Sure. You don't need to ask for that.

11 MS. MORENO: All right. Thank you.

12 BY MS. MORENO: Q. I just wanted -- if you could
13 come down, sir, please. I think you were talking earlier
14 both in direct -- certainly in cross and I think in direct
15 about Somaliland.

16 A. Yes.

17 Q. And what area in this map would you say is Somaliland?

18 A. Well, the -- formally speaking Somaliland claims this
19 territory.

20 Q. Can you see? Okay.

21 A. Somaliland claims from all of these regions up to the
22 eastern boundary of Sool and Sanaag. Effectively, it
23 administers up to this boundary here to the east of Erigavo
24 and to -- really to the west, Laascaanood, including
25 Laascaanood. This area is contested.

1 Q. Could you point to a place called Borama on the map?

2 A. Borama is here.

3 Q. Borama. And is Borama considered to be part of
4 Somaliland?

5 A. That depends who you ask.

6 Q. And why is that, sir?

7 A. Because it falls under Somaliland's administration --

8 Q. Okay.

9 A. -- Somaliland has de facto authority there. But there
10 are members of the community there who don't want to be part
11 of Somaliland or at least don't want to secede from the rest
12 of Somalia.

13 Q. I see. And Jijiga, do you see --

14 A. Jijiga is --

15 Q. And where is that?

16 A. In Ethiopia.

17 Q. In Ethiopia. Is that area also somewhat contested in
18 terms of boundaries?

19 A. No.

20 Q. Okay. All right. But Borama is administrated by
21 Somaliland?

22 A. That's right.

23 Q. All right. All right. Thank you, sir. You said that
24 you had some knowledge of clans, correct?

25 A. Yes, I did.

1 Q. Okay. And do you know the clans that hail from this area
2 in Borama?

3 A. I have some general knowledge of them, yes.

4 Q. Gadabuursi?

5 A. Gadabuursi, also known as Samaroon.

6 Q. And where -- where does the Gadabuursi clan hail from?

7 A. It -- they inhabit the southern part of Awdal region on
8 that map.

9 Q. Okay.

10 A. Also across the border into adjacent parts of Ethiopia
11 and Djibouti.

12 Q. Okay. So when you say the southern part, again, are we
13 talking about the northern part of Somalia?

14 A. No, I mean there's a region in the corner of that map
15 called Awdal region.

16 Q. I'm sorry. Awdal region?

17 A. This is where it is, says Awdal, and Awdal is this region
18 here.

19 Q. Okay.

20 A. And this part of -- the southern part of Awdal, and part
21 of the neighboring region of Woqooyi Galbeed to the east of
22 Hargeysa, to the west of Hargeysa, is also Gadabuursi and
23 across the border into Ethiopia and Djibouti.

24 Q. Okay. So, far away from the areas that we've been
25 talking about in terms of Mogadishu and the clans that hail

1 from there, correct?

2 A. As a home region.

3 Q. As a home region.

4 A. Yes, but there are many Somalis who -- from all over
5 Somalia --

6 Q. Yes.

7 A. -- who have grown up in Mogadishu --

8 Q. Okay.

9 A. -- and consider that home.

10 Q. All right. Thank you. Now, a different subject, a few
11 questions. You've testified that it's common among the
12 Somalis in the United States -- I'm paraphrasing -- to send
13 alms back to the poor in Somalia; would you agree with that?

14 A. No, I would say that it's more common for Somalis to send
15 money back to relatives.

16 Q. Okay. Right, to poor relatives?

17 A. Yes.

18 Q. And what are alms?

19 A. Alms or -- the Islamic term would be "zakat" -- would be
20 the payment of -- well, alms can also be given on an ad hoc
21 basis, but zakat would be the payment of approximately
22 2 percent of an individual's income to the poor every year.

23 Q. And this money is sent through hawalas, correct?

24 A. It can be given any way. I mean hawala is one form, very
25 common form.

1 Q. But they're not sent through any real banking system
2 because there's no internationally registered bank
3 functioning in Somalia --

4 A. That's right.

5 Q. -- correct? And that certainly would be true for the
6 time period relevant in this case, 2006-7 to 2009?

7 A. That's right.

8 Q. We heard a little bit about drought and famine. Now,
9 this particular drought, can you -- do you have a time frame
10 for this last drought that has impacted Somalia so viciously?

11 MS. HAN: Objection, relevance.

12 THE COURT: What time frame are we talking about,
13 Ms. Moreno?

14 MS. MORENO: The time frame in the calls, your
15 Honor, 2006 to 2009. All my questions are in that time
16 frame.

17 THE COURT: Okay. Very good. Are you still
18 objecting?

19 MS. HAN: No, your Honor.

20 THE COURT: Okay.

21 THE WITNESS: I -- I, you know, droughts begin
22 slowly, peak, and decline, and I don't -- and they're
23 constant in the Somali environment, so I can't tell you when
24 it started and when it ended. I can tell you that although
25 there was a drought through to part of 2006 and into 2007, at

1 the time the assessment of the aid community -- and I would
2 say specifically I worked at that time with the Office of
3 Coordination of Humanitarian Affairs -- was that displacement
4 was a bigger problem than drought, displacement from war.
5 There was a drought, but it wasn't one of the extremely
6 serious droughts like the one we've seen over the last two
7 years or the ones in '92-'93, but it was -- there was a
8 drought.

9 BY MS. MORENO: Q. So the one that -- in the last
10 two years was even more severe than the one in the time
11 period of say '06-'07 to '09?

12 A. That's right.

13 Q. Although the drought during that two-, three-year period
14 of time was significant?

15 A. It was, but I would -- in a sense, it was part of
16 building up to what happened later, which was between
17 2010-2012, then it became very serious.

18 Q. You mentioned displacement. Can you talk a little bit
19 about the displacement -- again, focusing on this particular
20 period of time -- what was going on.

21 A. There was massive displacement. The fighting in
22 Mogadishu -- a lot of people had come back to Mogadishu in
23 particular during the rule of the Islamic courts because of
24 the stability there. In 2007, when the Ethiopian military
25 came, there was some initial displacement out of fear that

1 violence was going to ensue. When heavy fighting began in
2 March 2007, I believe the estimates were that from between
3 March and maybe June, about 700,000 people left the city,
4 many of them going to that area we talked about.

5 Q. The refugee camp, that particular --

6 A. "Camp" is organized. This was just people fleeing and
7 settling along the road.

8 Q. So displacement -- to be displaced by the violence, it
9 doesn't necessarily mean that people can go to another place
10 where there is any sort of structure; is that fair to say?

11 A. Yes. The options for someone fleeing the violence were
12 to go to a relatively safe area or to cross the border to a
13 neighboring country and go to a refugee camp or try to settle
14 there temporarily, which many do.

15 Q. Or, as you -- I think you said, the 500,000 or 600,000
16 people, many of them just were along the road.

17 A. Many went along the road. Those who could went to places
18 in northern Somalia where they'd rent houses or settle and
19 try and do some business. But yes, several hundred thousand
20 found themselves along that stretch of road.

21 Q. For how long a period of time?

22 A. Well, some are still there.

23 Q. Some are still there. And would you agree with me that
24 the most vulnerable victims of displacement and the violence,
25 the drought, and the famine are children?

1 A. I think that's fair to say, yes.

2 MS. MORENO: Thank you. Nothing further.

3 THE COURT: Ms. Ghappour, did you have any
4 questions?

5 MR. GHAPPOUR: No, your Honor.

6 THE COURT: Mr. Durkin, any questions?

7 Cross-Examination

8 BY MR. DURKIN: Q. Mr. Bryden, do I assume it
9 would be a correct summary of your testimony to say that in
10 your opinion about Somalia that it's a mess?

11 A. Actually no.

12 Q. Okay.

13 A. I'm one of the optimists.

14 Q. How long have you been trying to make sense out of
15 Somalia?

16 A. Since I first arrived there about 22 years ago.

17 Q. And you're still an optimist, right?

18 A. I'm still an optimist.

19 Q. Hope springs eternal, correct?

20 A. That's correct.

21 Q. Because there's some very decent people there, aren't
22 there?

23 A. That's right.

24 Q. Notwithstanding the warlords and the militia and
25 everything else, correct?

1 A. Correct.

2 Q. That's because there's real live human beings there,
3 right?

4 A. That's right.

5 Q. When we talk about these settlements along the road --
6 let me make sure I get this correct -- are you telling me
7 that there are somewhere between 500,000 to 600,000 people
8 camped out along the highway going out of Mogadishu?

9 A. There were. It's much less now, but yes, that was --

10 Q. When was that? When was the peak of that?

11 A. About beginning to the end of 2007 and into 2008.

12 Q. So around the time we're talking about here, right?

13 A. That's right.

14 Q. And is that on this map here? Would you mind coming down
15 for a second and showing the ladies and gentlemen and me
16 where that road would be. Help if I put it this way, right?

17 A. It's this road, and the settlements would start probably
18 just off the map, maybe about here and continue way towards
19 Afgooye.

20 Q. So -- thank you. So we're talking about roughly half the
21 population of the city of San Diego being spread out along
22 the highway kind of like up I-5; am I right?

23 A. I don't know how many people live in San Diego I'm
24 afraid.

25 Q. If I told you I checked a little while ago and it was

1 about a million three, 600 close to half of that, right?

2 A. That would be about right.

3 Q. You with me?

4 A. Yes.

5 Q. Would you agree with me that that's virtually
6 incomprehensible to somebody that grew up in San Diego or New
7 York or Chicago?

8 MS. HAN: Objection, relevance.

9 THE COURT: Sustained.

10 BY MR. DURKIN: Q. Have you seen anything like
11 that anywhere else that you've either worked or traveled?

12 MS. HAN: Objection, relevance.

13 THE COURT: Sustained.

14 BY MR. DURKIN: Q. Let me ask you this. You said
15 that in these settlements or camps -- let me ask this. When
16 you say that people just built some type of shelter there,
17 what did they use? What are these settlements built out of?

18 MS. HAN: Objection, relevance.

19 THE COURT: Overruled.

20 THE WITNESS: They vary. They're everything from
21 some relatively decent structures, a few cinderblock; but for
22 the most part you'd be talking about corrugated iron and
23 plastic tarpaulin handed out by aid agencies and sticks and
24 whatever people could put together.

25 BY MR. DURKIN: Q. Kind of like shanties?

1 A. Yes.

2 Q. And I take it there's no plumbing?

3 A. No. For most of them, no.

4 Q. No electricity?

5 A. Electricity for many, no, but -- it's sad to say but
6 after two years of -- two decades of conflict, Somalis are
7 amazingly enterprising and resilient and very quickly
8 generators are installed and people can buy power for a fee,
9 low fee.

10 Q. Let's talk about that resilience and ingenuity. That's
11 how the militias pop up in those settlements, correct?

12 A. They -- they don't pop up in the settlements. I'm not
13 sure -- maybe I don't understand.

14 Q. I thought you told us -- maybe I misunderstood. I
15 thought you told us that there were militia inside these
16 settlements and that they sometimes fought with each other.

17 A. Well, they are, but they're not linked to the
18 settlements. These settlements happen in an area that is
19 already inhabited by people and where there was already
20 usually a preexisting militia -- again, the war's been going
21 on a long time -- but these militia will be linked to
22 different interests, different leaders, sometimes different
23 clans, and will compete for control particularly of things
24 like the road running through the settlement.

25 Q. How would you define or explain these militia? What do

1 you mean when you say a militia?

2 A. Very heavily armed gang, anywhere between several dozen
3 or several hundred fighters, usually from the same subclan,
4 and under control of a leader who is -- who may be a
5 businessperson, a political figure, an ideologue, a clan
6 elder, maybe all of those things at once. And that -- these
7 militia may be nominally to provide security, and sometimes
8 they do when there's a threat from another militia, but
9 sometimes they're just -- they're a threat themselves to
10 their own people. A lot of ordinary people are fed up with
11 these militia, young men with guns sitting by the side of the
12 road, waving down buses, demanding money.

13 Q. I take it that they don't have a Second Amendment to the
14 constitution in Somalia, right?

15 A. I missed that.

16 Q. You familiar with our Second Amendment with the right to
17 bear arms?

18 A. Yes.

19 Q. They don't -- that's not an issue in Somalia these days,
20 right?

21 A. No, that's not an issue.

22 Q. Okay. And would I be correct in assuming that the
23 militia would have like guys like this with weapons and
24 things like that?

25 THE COURT: What exhibit number is that, please?

1 MR. DURKIN: I'm sorry. 25-B.

2 THE COURT: Okay.

3 THE WITNESS: Well, actually most militias would
4 have men like that with weapons, but they probably wouldn't
5 have such complete uniforms, and they wouldn't be wearing the
6 red 'immama and hiding their faces.

7 BY MR. DURKIN: Q. Right. But do they -- do
8 people wear other kinds of bandanas there?

9 A. Yes, all kinds.

10 Q. So all kinds of different colors, right?

11 A. Yes.

12 Q. And those guys had uniforms, but most militias don't have
13 uniforms, right?

14 A. That's true.

15 Q. But they'd be carrying those kind of weapons, right?

16 A. That's right.

17 Q. In fact, you said earlier I think in response to some of
18 Mr. Dratel's questions that you yourself had hired militia to
19 take you around, correct?

20 A. Organizations I worked for hired militia.

21 Q. Right, that's what I meant.

22 A. Yes.

23 Q. And they had weapons like that too, right?

24 A. That's right.

25 Q. Okay. And that's very -- that's very common in

1 Mogadishu, in Somalia, correct?

2 A. Absolutely.

3 Q. Mogadishu in particular, correct?

4 A. Yes.

5 Q. Now, let me ask you this. You talked about this time
6 line, and one of the periods you talked -- I want to -- you
7 talked about this period that's up on the board now, right,
8 from roughly -- well, we can see '93 to 2002, correct?

9 A. Correct.

10 Q. And I believe you said that it was in -- right there
11 where that ugly finger is, 1995, that the UN peacekeeping
12 efforts failed and forces had to leave Somalia, correct?

13 A. Correct.

14 Q. And I take it between 1995 for quite a number of years,
15 there was no law or any type of government support or safety
16 at all, correct?

17 A. In southern Somalia.

18 Q. Okay. And is that where Mogadishu is?

19 A. Yes.

20 Q. Okay. And I take it you would agree with me that if you
21 were a 24-year-old Somali living in Somalia around 1999, that
22 if you could get out of there and go to Cairo, that would be
23 prudent, correct?

24 MS. HAN: Objection, relevance --

25 THE COURT: Well --

1 MS. HAN: -- calls for speculation.

2 THE COURT: Yeah, it is speculative. It would
3 really depend on the circumstances of the individual if it's
4 a hypothetical. If you feel you're able to answer that,
5 Mr. Bryden, you can answer it if you have sufficient
6 information.

7 THE WITNESS: I think a lot of people from Somalia
8 did take the decision to leave the country during those years
9 and look for better prospects elsewhere; others stayed, but
10 many did leave.

11 BY MR. DURKIN: Q. And those are the people you
12 discussed when you talked about the diaspora, right? At
13 least part of that diaspora is made up of people like that,
14 correct?

15 A. That's correct.

16 Q. Okay. And you're familiar with the economics of Somalia
17 as well, aren't you?

18 A. I'm not an economist, but yes, up to a point.

19 Q. You would agree with me that someone who could get out of
20 Somalia in this time period, 1999 let's say through 2006,
21 could make quite a bit of money -- could make quite a bit
22 more money driving a taxi in either St. Louis or San Diego
23 than they could in Mogadishu, correct?

24 MS. HAN: Objection; relevance, speculation.

25 THE COURT: The objection is sustained on relevance

1 grounds.

2 BY MR. DURKIN: Q. So you talked about the money
3 that goes back; remember that?

4 A. Yes.

5 Q. I think you said the diaspora sends something like -- was
6 it almost a billion dollars a year back?

7 A. That's right. That's the estimate.

8 Q. Okay. And I think you said it was to families mostly,
9 correct?

10 A. Correct.

11 Q. And you don't have any interest in the outcome of this
12 case, do you?

13 A. No, I don't.

14 Q. And you don't know my client, Mr. Ahmed Nasir Taalil
15 Mohamud, do you?

16 A. No, I don't.

17 MR. DURKIN: That's all I have.

18 THE COURT: Anything further, Ms. Han?

19 MS. HAN: Yes, your Honor.

20 THE COURT: About how long will you be on redirect?

21 MS. HAN: I think about 20 minutes or so.

22 THE COURT: Twenty minutes. Well, okay. Let's --
23 sounds like we can finish the witness by noon hopefully in
24 any event.

25 MS. HAN: Certainly, your Honor.

1 THE COURT: And I wanted to clarify one thing with
2 Mr. Dratel on just the last couple of questions that were
3 asked. I can do that from the bench. Mr. Dratel, you were
4 into the area of malnutrition. You can certainly ask any
5 questions on recross if you'd like relative to the nature and
6 extent of malnutrition areas. I didn't mean to foreclose you
7 from that. It was a physical description of the individual
8 process I was staying away from.

9 MR. DRATEL: Thank you, your Honor.

10 THE COURT: All right, Ms. Han, please.

11 Redirect Examination

12 BY MS. HAN: Q. Mr. Bryden, on cross-examination
13 you were asked about having had militias support you while
14 working for nongovernmental organizations; do you recall
15 that?

16 A. Yes, I do.

17 Q. And can you describe why is it that you needed that kind
18 of support?

19 A. Nongovernmental organizations in Somalia handle
20 resources, different forms; they issue contracts to
21 personnel, they may be handling food, medicines, fuel for
22 their vehicle fleets, all of which are high-value assets and
23 attract the attention of bandits and some clan militias as
24 well at different times. So aid agencies, in the absence of
25 a government, require protection.

1 Now, in some parts of Somalia where there is local
2 governance mainly, in parts of the north, there are special
3 police units that are established to look after aid agencies;
4 that's mainly in Somaliland and Puntland. But further south,
5 and particularly the time that we've been talking about,
6 there was no police force, no duly constituted authority, and
7 the only way to protect house, assets, and personnel --
8 because kidnapping has become increasingly a problem in
9 Somalia -- was to have armed security.

10 Q. And were aid agencies actually a target of al-Shabaab in
11 2007 and 2008?

12 A. Yes, they were.

13 Q. And did al-Shabaab actually have a section of its entity
14 that worked on specifically that?

15 A. They -- they had various parts. There was what they
16 called OSAFA, the Office for the Supervision of
17 Administration of Foreign Assistance I think, that engaged
18 with aid agencies, mainly banning them and denying them
19 access to areas under al-Shabaab control. There was another
20 part of the organization that had been involved actually in
21 attacks on some aid agencies.

22 Q. And what was that section called?

23 A. Well, it didn't have a name at the time of the first
24 attacks, but later on became known as amniyat.

25 Q. And was that the -- like internal security force? Is

1 that what you testified to, that it was an internal security
2 force?

3 A. Was more like intelligence and counterintelligence.

4 Q. And speaking about clan militias, in talking about the
5 time period of 2007 and 2008, did clan militias also fight
6 alongside al-Shabaab?

7 A. They -- clan militias, court militias, many different
8 militias fought -- side by side is maybe not entirely
9 correct. They had a common enemy, they often fought in the
10 same areas; sometimes they cooperated, sometimes they didn't.

11 Q. And another entity that sometimes cooperated with
12 al-Shabaab was the ARS, right, the Alliance for Reliberation
13 of Somalia?

14 A. That's correct.

15 Q. But in some ways the ARS and al-Shabaab -- well, let me
16 ask you this: Is ARS -- were there two different sections in
17 ARS, essentially two different wings of ARS?

18 A. I would say more than two factions within ARS.
19 Eventually they split into the Asmara group and the Djibouti
20 group.

21 Q. And what were the differences between the Asmara group
22 and the Djibouti group?

23 A. The Djibouti group entered dialog with the Transitional
24 Federal Government in order to reach a peace settlement, and
25 that settlement involved the replacement of the president,

1 Abdullahi Yusuf, with a new president, Sheik Sharif, who had
2 been with the Islamic courts. The Asmara wing, which did not
3 travel to Djibouti to take part in the peace talks, advocated
4 continuing the armed struggle, and that wing -- the leader of
5 that wing after the split became Sheik Hassan Dahir Aweys.

6 Q. And what was al-Shabaab's view of the Djibouti group?

7 A. Al-Shabaab opposed the Djibouti group.

8 Q. And why is that?

9 A. Because al-Shabaab rejected any dialog with the
10 Transitional Federal Government. Already al-Shabaab was
11 fairly disparaging about the Asmara group for removing itself
12 from Somalia and not being in the front lines. The Djibouti
13 group went one step even further, engaging in political
14 dialog, and al-Shabaab condemned that.

15 Q. And you were also asked about an entity called al-Sunna
16 wal jamaa -- I'm sorry. Can you pronounce that for me?

17 A. Al-Sunna wal jamaa.

18 Q. Al-Sunna wal jamaa. You were also asked about that on
19 cross-examination; do you remember that?

20 A. Yes, I do.

21 Q. Okay. And they were an entity that came in -- and when
22 is it that they became an -- well, let me ask it --
23 withdrawn. Where were they -- where were they based, if you
24 know?

25 A. Al-Sunna had different wings, but the group that I've

1 been asked about is principally the group that was based in
2 Galgaduud region, and they were a combination. They were a
3 regional alliance of clan militias but sharing a common
4 ideology; that was the defense of their version of Islam and
5 their enmity to al-Shabaab.

6 Q. And when did they become a force against al-Shabaab in
7 2008?

8 A. Well, they started to emerge I believe late 2007, and
9 then in 2008 they actually really started to make progress as
10 a fighting force.

11 Q. And do you know when in 2008 they actually started to
12 develop as a fighting force?

13 A. The exact date I couldn't tell you. They were already in
14 existence early in the year.

15 Q. You were also asked about fundraising use -- al-Shabaab's
16 fundraising using Paltalk; do you remember that?

17 A. Yes, I do.

18 Q. What is Paltalk?

19 A. Paltalk is an online chat room.

20 Q. And was that -- could anybody enter a Paltalk chat room
21 that was a fundraising chat room for al-Shabaab?

22 A. Initially yes, but quite quickly al-Shabaab developed
23 suspicions that they were being infiltrated, and so
24 invitation -- access to chat rooms was often by invitation
25 only; you had to be endorsed by another member.

1 Q. And were Paltalk and other forums, were those
2 al-Shabaab's only methods of fundraising?

3 A. No, there were other forms of fundraising.

4 Q. And speaking specifically about 2007 and 2008, you were
5 asked about a person named Mahad Karate; do you remember
6 that?

7 A. Yes, I do.

8 Q. And speaking specifically about 2007 and 2008, what was
9 Mahad Karate's role in al-Shabaab?

10 A. Mahad Karate was -- he was already acknowledged as a
11 fairly senior figure, an operational commander in al-Shabaab
12 in -- in 2007. He was at the time -- I should explain that
13 there are things that were not known at the time but were
14 speculation which then later have become confirmed. At the
15 time he was generally described as someone responsible for
16 targeted killings and assassinations. Later on it became
17 known that he was a senior figure in the amniyat, and so that
18 confirmed what had been believed at the time.

19 In 2008, after the killing of Aden Hashi Ayrow,
20 Mahad Karate was one of the Shabaab leaders that then emerged
21 as the next generation of senior commanders, more visible,
22 and seems to have had an on-and-off presence in the
23 al-Shabaab shura.

24 Q. And you remember that you were also asked about the
25 Ethiopians and that they had engaged in killing civilians?

1 A. Yes.

2 Q. Did al-Shabaab also engage in killing civilians?

3 A. Yes, they did.

4 Q. And did they also engage in destroying property?

5 A. Yes, they did.

6 Q. And you were also asked about the Council of Islamic
7 Courts; do you remember that?

8 A. Yes.

9 Q. And I believe that you were asked about a portion of your
10 writing that talked about the Islamic Courts Union and its
11 relative stability but also their concerns about the
12 extremist elements within the Islamic Courts Union; do you
13 remember that?

14 A. Yes, I do.

15 Q. What was that extremist element within the Islamic Courts
16 Union?

17 A. The extremists -- the main extremist element within the
18 Islamic Courts Union was al-Shabaab. There were also some
19 members of what I would call al-Itihaad, the remnants of
20 al-Itihaad, who were ideologically close to the courts who
21 were also extreme and seem -- close to al-Shabaab, excuse
22 me -- and used to move in and out of al-Shabaab circles; but
23 that was the extreme -- al-Shabaab was the extremist fringe
24 of the courts.

25 Q. I'm sorry. I don't think I understand that. So was

1 al-Itihaad, or AIAI, were they aligned with al-Shabaab as
2 extremists within the Islamic Courts Union?

3 A. There were other former members of al-Itihaad in the
4 courts, some of whom were quite moderate, sort of holding the
5 political center in the court alliance, and some of whom
6 moved closer to al-Shabaab and cooperated with them.

7 Q. You were also asked about some of the weapons that
8 al-Shabaab used; do you remember that?

9 A. Yes, I do.

10 Q. And you were asked about the commonality of the use of
11 rocket-propelled grenades in Somalia?

12 A. Yes.

13 Q. Speaking about other tactics that al-Shabaab used, were
14 suicide bombings exclusive to al-Shabaab?

15 MR. DRATEL: Objection; not part of cross.

16 THE COURT: Well, this area has been covered on
17 direct. I think the witness went through all the areas of
18 tactics utilized here. This question is different how, Ms.
19 Han?

20 MS. HAN: Your Honor, on cross-examination he was
21 asked about sort of the commonality of some of the tactics
22 that he was asked about on direct.

23 THE COURT: In that context the objection is
24 overruled.

25 BY MS. HAN: Q. Was -- as far as suicide bombings,

1 was al-Shabaab the only entity in Somalia that engaged in
2 those in 2007 and 2008?

3 A. Yes, it was.

4 Q. And you were also asked about the Ethiopians and their
5 engagement with the Hawiye clan; do you remember that?

6 A. Yes, I do.

7 Q. And in what time period were you talking about that they
8 started to negotiate with the Hawiye clan?

9 A. They started to negotiate during the course of 2007, mid
10 2007, until -- well, until the end of the year.

11 Q. And the Hawiye clan, it's large, right?

12 A. That's right.

13 Q. Approximately -- do you have any sense of approximately
14 how many people?

15 A. I don't. I wouldn't want to speculate, I'm not sure, but
16 probably well over a million, more.

17 Q. And among those million people, there were different
18 opinions about the Ethiopians, about al-Shabaab, about
19 generally what was happening in Somalia, correct?

20 A. That's correct.

21 Q. Some of them supported al-Shabaab and some of them
22 didn't?

23 A. That's right.

24 Q. And I believe you were also shown Government's Exhibit
25 25-B during cross-examination, and you were asked about the

1 red and white scarves that the individuals are wearing; do
2 you remember that?

3 A. I commented on it. I don't remember being asked about
4 it.

5 Q. Okay. Who -- what are those red and white scarves
6 called?

7 A. Well, the Somali term would be 'immama.

8 Q. Can you spell that for us, please.

9 A. Apostrophe i-m-m-a-m-a.

10 Q. And you were asked about clan militias and whether or not
11 they would wear those scarves, right?

12 A. Yes.

13 Q. And -- I'm sorry. What was your answer to that?

14 A. My answer was that -- my answer was that they would wear
15 a similar cloth, they'd wear 'immamas of different colors.

16 Q. And are those particular scarves of the red and white
17 color distinct to any group?

18 A. Well, they -- I should say they're available on the
19 market and people will wear them as a matter of preference;
20 but systematically wearing them as part of a militia uniform
21 became first the hallmark of -- first al-Itihaad, then
22 Islamic courts, and more recently al-Shabaab -- not always
23 red but the covering of the face was a distinctly al-Shabaab
24 trait.

25 Q. And finally you were asked about how it is that you

1 departed or stopped working for ICG; do you remember that?

2 A. Yes, I do.

3 Q. And ICG -- what does that stand for again?

4 A. The International Crisis Group.

5 Q. And you had written reports for them?

6 A. Yes, I had.

7 Q. And how is it -- why is it that you ended up leaving ICG?

8 A. Because my life had been threatened by al-Shabaab. ICG
9 as a precaution relocated me and my family to South Africa.
10 South Africa was too far away for me to do my job, and I
11 wanted to return to the region and to continue to work in
12 Somalia. ICG felt that was too dangerous, and so I resigned
13 and came back to work.

14 Q. And what led to you being threatened by al-Shabaab?

15 A. I'm not entirely sure, they didn't tell me, but probably
16 the fact that we had published the first -- first report,
17 first public report ever written on Aden Hashi Ayrow and on
18 what became known as al-Shabaab. At the time it didn't have
19 that name.

20 MS. HAN: Okay. Thank you.

21 THE COURT: Mr. Dratel, anything further?

22 MR. DRATEL: Yes, your Honor. Thank you.

23 Recross-Examination

24 BY MR. DRATEL: Q. With respect to the
25 organizations that hired militias to protect you and your

1 colleagues, you had mentioned with respect to your
2 accommodation with al-Shabaab that allowed you -- well, not
3 allowed you, but that at least gave you some comfort about
4 coming back into Somalia without the same level of fear with
5 respect to your safety, that you would be protected; you had
6 said that one was -- one of your bodyguards was actually
7 al-Shabaab?

8 A. That's right.

9 Q. But you weren't a supporter of al-Shabaab, right?

10 A. That's right.

11 Q. And you weren't working with al-Shabaab in your -- in
12 your opinion, right?

13 A. That's right.

14 Q. It was not your intention to provide any support to
15 al-Shabaab, correct?

16 A. I didn't provide any support to al-Shabaab.

17 Q. Right. But it wasn't your intention to work with them in
18 any way?

19 A. I didn't work with them. This was a security detail
20 provided by the Islamic courts, and I didn't pay for it.

21 Q. And it included an al-Shabaab member?

22 A. It did for the reason that he would recognize other
23 members of al-Shabaab and ensure that I wasn't approached or
24 harmed by them.

25 Q. You mentioned on redirect that al-Shabaab denied aid to

1 certain areas of Somalia in 2007-2008, right?

2 A. That's right.

3 Q. And it's true as well that in those areas that al-Shabaab
4 didn't -- withdrawn -- denied aid, we mean the ability of
5 international NGOs, nongovernmental organizations, for
6 example, like CARE, which you had worked for at one point, to
7 get to the public, to get to the populace directly and
8 provided the kind of aid that they were committed to do,
9 right?

10 A. That's correct.

11 Q. And it's true in turn that in those areas, the need for
12 humanitarian aid became more acute because those NGOs
13 couldn't get access, right?

14 A. That's true.

15 Q. And that would make remittances that much more important
16 in that regard, right?

17 A. It could, yes.

18 Q. It would also add to the malnutrition in those areas,
19 right?

20 A. I think there's no question that it did.

21 Q. And for a parent in that situation in one of those areas,
22 what's their recourse?

23 MS. HAN: Objection; relevance, speculation.

24 THE COURT: I'm a little unclear about the --

25 BY MR. DRATEL: Q. What were the options for --

1 THE COURT: Are you talking about the diaspora, you
2 talking about --

3 MR. DRATEL: No, no, somebody --

4 THE COURT: -- in the country --

5 BY MR. DRATEL: Q. In Somalia, what are their
6 options in a situation with a child who's malnourished?

7 THE COURT: The objection is overruled.

8 THE WITNESS: Well, if I may, to --

9 BY MR. DRATEL: Q. Certainly.

10 A. -- put it in context is that al-Shabaab -- part of what
11 was happening was that al-Shabaab was also levying its own
12 taxes on families, taking food, taking money, so that was --
13 the options -- in the sense they were very few. If you had
14 money, it could be taken away from you; if you grew food, it
15 could be taken away from you. So you could ask for more
16 money, you could ask relatives to send it to you. If you
17 were lucky, you got to keep it, all of it; if you were
18 unlucky, then you had to pay some of it to the militias in
19 your area.

20 Q. But it wasn't coming from the TFG?

21 A. Wasn't -- no one else was in a position to provide
22 assistance to people in those areas.

23 Q. Okay. And you talked about something during your
24 redirect in terms of the timing of your knowledge. So your
25 knowledge here today is an accumulation in many respects of

1 what you've learned over the entire course of time, right?

2 A. That's correct.

3 Q. And some of it has been since 2008, like you said, that
4 either confirmed speculation -- that at the time may have
5 been speculation or allegation, now you find yourself
6 comfortable confirming it, correct?

7 A. Correct.

8 Q. 2008 may not have been the same, correct, your level of
9 comfort with certain facts?

10 A. Correct.

11 Q. Now, you also on redirect were asked about al-Shabaab
12 killing civilians, right?

13 A. Yes.

14 Q. And, in fact, that's one of the reasons for local
15 administrations to have self-protection, right, was the
16 predations of al-Shabaab itself?

17 A. I'm -- I don't think that was the reason for any local
18 administrations. They usually were a product of a community
19 wanting to organize itself. If al-Shabaab then became a
20 threat, they might organize another -- you know, their
21 militia against it or strengthen it.

22 Q. How about al-Sunna?

23 A. Al-Sunna was a very special case.

24 Q. But it was -- but it was an armed organization that
25 protected itself from al-Shabaab and protected its members

1 and its members' families, the Sufi community, from
2 al-Shabaab?

3 A. That's correct.

4 Q. You were asked about the Hawiye clan, and it's fair to
5 say that the Hawiye clan is on every side of the issues in
6 Somalia?

7 A. It brings a Hawiye orientation to every issue in Somalia.

8 Q. And even Ayr as a subclan, there are Ayr on all sides of
9 the issues, right, TFG, ARS, al-Shabaab --

10 A. That's --

11 Q. -- al-Sunna?

12 A. These are all very complicated issues. Often much of a
13 clan or community shares an orientation, but there will
14 always be parts of it that take other positions, and there
15 will always be differences within the community.

16 Q. But there were Ayr in TFG?

17 A. There were Ayr in TFG.

18 Q. There were Ayr in ARS?

19 A. That's correct.

20 Q. There were Ayr in al-Shabaab?

21 A. That's correct.

22 Q. There were Ayr in al-Sunna?

23 A. That's correct.

24 MR. DRATEL: Nothing further, your Honor. Thank
25 you.

1 THE COURT: Okay. Ms. Moreno, anything further?

2 MS. MORENO: No, your Honor.

3 THE COURT: Mr. Ghappour?

4 MR. GHAPPOUR: No, your Honor.

5 THE COURT: Mr. Durkin?

6 MR. DURKIN: No, Judge.

7 THE COURT: Okay. And --

8 MS. HAN: No, your Honor. We have nothing further.

9 THE COURT: Okay. Very good. All right,
10 Mr. Bryden. Thank you. You are excused.

11 THE WITNESS: Thank you, your Honor.

12 MR. COLE: I'd like him subject to recall.

13 THE COURT: Fine, subject to recall. All right.
14 Thank you, sir.

15 THE WITNESS: Thank you, your Honor.

16 THE COURT: And, ladies and gentlemen, we're just a
17 few minutes away from noon, so we'll take our noon recess at
18 this time and ask that you be ready to go outside at 1:30
19 this afternoon. Remember the admonition not to discuss the
20 case or make any decisions at this time. Thank you.

21 (The jury left the courtroom.)

22 THE COURT: All right, counsel. We're outside the
23 presence of all jurors. Just a few administrative -- Mr.
24 Dratel, I know you've got some business ahead of you.

25 MR. DRATEL: I'm waiting for the --

1 THE COURT: Okay. Very good. Just a few things,
2 short list of loose ends I wanted to ask counsel to do.
3 First of all, on the pages of Exhibit 28, there are several
4 pages there; I'd like you to alphabetize those pages 28-A
5 through whatever, because I imagine in the future if they're
6 referred to by either side, it will be better to indicate
7 what page is going up on the screen.

8 Okay. 25-A and -C are out. I did have -- I did
9 have a question for the government. I should have asked this
10 yesterday. -B is in obviously. I don't seem to have my --
11 can't locate it right away. Yes, on -A, is Ayrow even in
12 that photograph?

13 MR. COLE: Your Honor, there was -- one of the
14 defense attorneys I think in opening referred to that as a
15 picture of Ayrow, but that's a picture of Mukhtar Roobow that
16 was identified both in the depositions in Djibouti and by
17 Mr. Bryden.

18 THE COURT: Who's in the middle of that, seated?

19 MR. COLE: Which -- are you talking about -B, your
20 Honor?

21 THE COURT: No, -A.

22 MR. COLE: Oh, -A. Seated at the microphones as if
23 speaking is Mukhtar Roobow, the public spokesperson of
24 al-Shabaab.

25 THE COURT: Right.

1 MR. COLE: The same person in -B.

2 THE COURT: Who's in the middle with the white
3 headpiece?

4 MR. COLE: Yeah, that's Mukhtar Roobow.

5 THE COURT: Okay. All right. I think -- we don't
6 have to revisit this. I think just one photograph was enough
7 to drive home that point. With respect to exhibits, I think
8 that they're spread out all over counsel table, and I'm going
9 to ask all counsel to maintain the exhibits, the actual
10 exhibits, the marked exhibits, either on the exhibit table
11 here, if you would, or on the witness stand. But to the
12 extent we're now starting to get spread out all over the
13 courtroom, I'm concerned about that. I try to be as informal
14 as possible, but I just don't want to have a case of exhibits
15 inadvertently being placed in briefcases or left anywhere we
16 can't -- we can't retain them.

17 MR. COLE: And, your Honor, just to help on that
18 score, we gave counsel color copies of these exhibits.

19 THE COURT: Great.

20 MR. COLE: I think they're copies instead of the
21 real ones, so --

22 THE COURT: As long as the marked exhibits are in
23 one of two locations, on the exhibit table or on the witness
24 stand. Courtroom 15, I'm advised that no one's in there
25 today. And furthermore, I've seen several open seats here in

1 the courtroom. So I certainly don't want to leave that
2 courtroom open at this point, particularly because it has to
3 be monitored, there needs to be someone in there. So I've
4 indicated that courtroom can be closed at this time. But
5 counsel, anytime you're aware that there's going to be a
6 significant number of people, that overflow is needed, let us
7 know because everything is all set up and we can, with a
8 little bit of notice, unlock that and make it available as
9 we've already done. But until we get that notice from you,
10 we'll leave it closed. That's all I had. We'll see you at
11 1:30.

12 MS. FONTIER: Thank you, your Honor.

13 MR. DRATEL: Thank you, your Honor.

14 (There was a break in the proceedings.)

15 THE COURT: Okay. Good afternoon, ladies and
16 gentlemen. We are ready to proceed. Everyone is present.
17 Mr. Cole, Ms. Han?

18 MS. HAN: Your Honor, the United States calls
19 Citizenship and Immigration Services Officer Concepcion
20 Flores.

21 THE CLERK: Would you raise your right hand to be
22 sworn, please. Do you solemnly swear that the evidence you
23 shall give in the cause now before the Court shall be the
24 truth, the whole truth, and nothing but the truth?

25 THE WITNESS: I do.

1 Concepcion Flores

2 was called by the government and testified as follows:

3 THE CLERK: Can you please state and spell your
4 first and last name for the record.

5 THE WITNESS: Sure. Concepcion Flores,
6 C-o-n-c-e-p-c-i-o-n, Flores, F-l-o-r-e-s.

7 THE COURT: You're going to have to speak up, and
8 you might want to get a little closer to the microphone
9 there. Everyone in the courtroom needs to hear you. Thank
10 you.

11 THE WITNESS: Sure.

12 MS. HAN: Your Honor, may I inquire?

13 THE COURT: Certainly.

14 MS. HAN: Thank you, your Honor.

15 Direct Examination

16 BY MS. HAN: Q. Good afternoon, Ms. Flores.

17 A. Hello.

18 Q. Can you please tell us how you're employed.

19 A. I am an Immigration Services officer with U.S.
20 Citizenship and Immigration Service.

21 Q. And what is U.S. Citizenship and Immigration Services?

22 A. It's an agency within the Department of Justice -- I'm
23 sorry -- the Department of Homeland Security, and
24 interviewing applicants for certain immigration benefits.

25 Q. And how long have you worked there?

1 A. Since 2002.

2 Q. And what is it that you do there?

3 A. I review cases and I interview applicants on pending
4 applications to determine if they're eligible for that
5 benefit.

6 Q. And the applications that we're talking about, they're
7 immigration applications?

8 A. Yes.

9 Q. And are you familiar with what an I-485 application is?

10 A. Yes, I am.

11 Q. What is an I-485 application?

12 A. It's an application for a permanent residency card.

13 Q. And I'm going to direct your attention to October 13 of
14 2010. Did you interview a person named Mohamad Mohamad
15 Mohamud on that date?

16 A. Yes.

17 Q. And did you interview him regarding an I-485 application?

18 A. Yes.

19 Q. I'm going to show you Exhibits 29-A through -G -- I'm
20 sorry -- yes 29-A through -G and exhibits 9-A through 9-T.
21 So first taking Exhibits 29-A through -G, what is 29-A
22 through -G?

23 A. This is a copy of the form I-485.

24 (Exhibit No. 29 identified.)

25 Q. And is that for Mohamad Mohamad Mohamud?

1 A. Yes.

2 Q. And do you see your signature on the front page?

3 A. Yes, I do.

4 Q. And taking 9-A through 9-T, the other packet that I gave
5 you, what is that?

6 A. This is the record of sworn statement.

7 (Exhibit No. 9 identified.)

8 Q. And was that also for Mohamad Mohamad Mohamud?

9 A. Yes.

10 Q. And do you see your handwriting there as well as the
11 handwriting of your colleague?

12 A. Yes.

13 MS. HAN: The United States offers Exhibits 29-A,
14 -B, -C, -D, -E, -F, and -G, as well as Exhibits 9-A, -C, -D,
15 and -E.

16 THE COURT: A through what now, 9-A --

17 MS. HAN: 9-A, -C, -D, and -E.

18 THE COURT: Okay. -A through -E. All right.

19 Those exhibits are admitted.

20 (Exhibit Nos. 29, 9 admitted.)

21 BY MS. HAN: Q. And first taking 29-A -- I'm
22 sorry -- 29, if I could refer you to 29-B specifically, which
23 is the front page of the I-485 application for -- I'm
24 sorry -- 29-C I believe, which is the front page of the I-485
25 application; is that right?

1 A. Yes.

2 Q. The marking at the bottom is 29-B?

3 A. Yes.

4 Q. Okay. And you had testified that you saw your signature
5 on that application; is that right?

6 A. Yes.

7 Q. Okay. And on what side do you see your signature?

8 A. On the right column under applicants interviewed.

9 Q. Okay. And is it there highlighted on this screen now on
10 the right side?

11 A. Yes.

12 Q. And do you also see the applicant's name, Mohamad Mohamad
13 Mohamud?

14 A. Yes.

15 Q. And prior to interviewing Mohamad Mohamad Mohamud, did
16 you confirm that the person in front of you was the person
17 who had submitted the application?

18 A. Yes.

19 Q. And how is it that you did that?

20 A. I asked for identification, and he provided a driver's
21 license and I believe his form I-94.

22 Q. Are those included as Exhibits 29-F and -G?

23 A. Yes, 29-F. I don't see the other.

24 Q. Okay. We're going to call that -G, that last one.

25 A. Okay.

1 Q. So 29-F is what?

2 A. 29-F is photographs.

3 Q. Photographs of who?

4 A. Of Mr. Mohamud.

5 Q. And what is 29-G? That would be the last page after
6 29-F.

7 A. On this copy 29-F is the driver's license, and the last
8 page, it's again marked 29-F and it's a photograph.

9 Q. Okay. And you compared -- I'm sorry -- you compared the
10 driver's license to those photographs?

11 A. Yes.

12 Q. Okay. And once you had then done so, did you proceed
13 with the interview about the application?

14 A. Yes.

15 Q. Okay. And what is it that you do when you interview
16 somebody about an I-485 application?

17 A. We basically go through the application to make sure all
18 the information is updated and current.

19 Q. So do you go through the applicant's answers and then
20 make corrections as they change their answers, if they do?

21 A. Yes.

22 Q. Okay. And how do you note those changes in answers?

23 A. It's in red inkpen.

24 Q. Okay. And -- and is that reflected here on the first
25 page as well that you made corrections?

1 A. Yes.

2 Q. Okay. And if we could go to the next page, the second
3 page of the I-485 application. And among the questions that
4 you asked him on the I-485 application, did you ask him about
5 part 3, about what his current employment was?

6 A. Yes.

7 Q. And what was his answer that he had provided before when
8 he submitted the application?

9 A. At the time of filing, he wrote down "student."

10 Q. And then at the time that you interviewed him, was his
11 answer different?

12 A. Yes.

13 Q. Okay. And did you note that?

14 A. Yes.

15 Q. And is that highlighted on the top right corner of the
16 page that's up on the screen?

17 A. Yes.

18 Q. Okay. And what are the corrections that you made?

19 A. He stated that he was an imam at a mosque.

20 Q. Okay. And when you make corrections to an application,
21 does someone have an opportunity to go through those
22 corrections and agree or disagree with the corrections that
23 you've made?

24 A. Yes.

25 Q. Okay. And turning to the last page of the application,

1 did Mohamad Mohamad Mohamud have the opportunity to do that
2 in this case as well?

3 A. Yes.

4 Q. Okay. And how is that indicated on the application? I
5 believe that we are on 9-D; is that right?

6 A. Yes.

7 Q. Okay. So looking at 9-D, how is that indicated on the
8 screen for the jurors?

9 A. He initialed.

10 Q. Okay. And can you please indicate what initials you're
11 talking about. There are several initials there.

12 A. Right.

13 Q. You have a pointer there right there if you wanted to
14 point -- use the pointer for the jury.

15 A. Right there.

16 Q. Okay. So in the lower middle part of the page?

17 A. Yes.

18 Q. Do you also see your initials or signature above that?

19 A. Yes.

20 Q. Okay. And in addition to going over that application
21 with him, did you also go over a record of sworn statement?

22 A. Yes.

23 Q. And on the record of sworn statement, were there also
24 several questions?

25 A. Yes.

1 Q. And how did the interview about the record of sworn
2 statement, how did that go?

3 A. That part, a co-worker and I, another immigration officer
4 from the Fraud Detection and National Security was also
5 interviewing him; both the other officer and I were
6 interviewing Mr. Mohamud, and I would ask the questions, and
7 she would write down the answer.

8 Q. Okay. And looking at Exhibit 9-A I believe -- yes,
9 Exhibit 9-A -- do you see that there?

10 A. Yes.

11 Q. Okay. Which is the first page of the record of sworn
12 statement. So among the questions that you asked
13 Mr. Mohamud, did you ask him about any nicknames?

14 A. Yes.

15 Q. Okay. And is that reflected in question 2?

16 A. Yes.

17 Q. And what was his answer?

18 A. Khadar is a nickname. I have -- I have never used it
19 legally. I started using it in Pakistan in 1994 to 2000.
20 And there's a reverse side to that.

21 Q. Okay. So the page that we're talking about is 9-A, and
22 then the reverse side, is that 9-B?

23 A. Yes.

24 Q. Okay. So turning to 9-B, which is the back side of that
25 page, and -- I'm sorry -- what you just read, is that

1 highlighted up there on the screen for the jury?

2 A. Yes.

3 Q. Okay. So turning to 9-B, which is the continuation of
4 the second answer or the answer for question number 2, what
5 was the continuation?

6 A. I used it since I lived in Somalia. The only legal name
7 I have used is Mohamad Mohamad Mohamud.

8 Q. And was Mr. Mohamud given an opportunity to review that
9 application and also make additions?

10 A. Yes.

11 Q. Okay. And did he do so in this instance as well?

12 A. Yes.

13 Q. And how -- and what additions did he make?

14 A. He stated my mother gave me this name Khadar, so when I
15 was in Somalia, some people, including my mother, used to
16 call me Khadar. However, my legal name, which was written in
17 documents, was Mohamad. When I came to Pakistan, my friends
18 started to call me Mohamad Khadar, so I consider this Mohamad
19 Khadar is nickname.

20 Q. And did he also initial and sign under those notations
21 that he made?

22 A. Yes.

23 Q. And the highlighted portion that you read, is that
24 highlighted for the jury on the screen?

25 A. Yes.

1 Q. And are -- and where are his initials and his date?

2 A. The lower right corner.

3 Q. Okay. And going back to the Exhibits 29-F and -G -- or
4 -F and the form after that that we're calling -G now --

5 A. Uh-huh.

6 Q. -- those are the -- those are the items that you saw --
7 that you used to verify the identification of the person in
8 front of you?

9 A. Yes.

10 Q. -- right? That you interviewed on October 13?

11 A. Yes.

12 Q. Do you think that you would recognize Mr. Mohamud if you
13 saw him today?

14 A. Maybe.

15 Q. Okay. Do you want to take a look around the room and see
16 if you recognize him?

17 A. I believe so.

18 Q. Okay. Do you want to point to him and indicate an
19 article of clothing that he's wearing.

20 A. I believe it's the gentleman straight here in the corner
21 with the black suit and tie, black and white stripes --

22 MS. HAN: Okay. Thank you.

23 THE WITNESS: -- and glasses.

24 MS. HAN: I have no further questions. Thank you.

25 THE COURT: Well, would you like the record to

1 reflect --

2 MS. HAN: Yes, your Honor. I apologize. If the
3 record could reflect that the witness has identified
4 defendant Mohamud -- or Mohamad Mohamad Mohamud.

5 THE COURT: I think that's agreed to.

6 MS. MORENO: Yes, your Honor. So stipulated.

7 THE COURT: Okay. And furthermore, I assume --
8 these are not -- this is not 801 (d) (2) (E) evidence and that
9 there should be a limiting instruction here.

10 MS. HAN: Yes, your Honor.

11 THE COURT: That would be appreciated in the future
12 if you're calling a witness where there's going to be -- I
13 don't know if there are any more such witnesses, but if there
14 are other witnesses, then give me a bit of a head's up.
15 Ladies and gentlemen, all of the testimony you've just heard
16 from this witness pertains only to defendant Mohamad Mohamad
17 Mohamud. You may not consider it with respect to the other
18 three defendants in the case.

19 MS. HAN: I have no further questions.

20 THE COURT: Okay. All right. Very good. Ms.
21 Moreno?

22 MS. MORENO: Just a few questions, your Honor. I
23 have a specific request because -- would it be possible for
24 me to use the exhibit that's been admitted into evidence on
25 the Elmo because I don't have it.

1 THE COURT: Certainly. Please.

2 MS. MORENO: May I approach?

3 THE COURT: Please.

4 MS. MORENO: May I have a quick moment, your Honor?

5 THE COURT: If there are any extra copies of the
6 Exhibit 9-A through -E, I'd appreciate getting copies of
7 those as well. They weren't originally in the notebook here.

8 MS. HAN: Yes, your Honor.

9 THE COURT: Take your time on those.

10 MS. HAN: Yes, your Honor.

11 THE COURT: All right.

12 Cross-Examination

13 BY MS. MORENO: Q. I think -- can you see that on
14 the screen?

15 A. Yes.

16 Q. I don't know if this is 9-A. Looking at what's been
17 marked and admitted as 9-A, do I understand you correctly
18 that you said that the script that we see on these pages is
19 from your co-worker?

20 A. Yes.

21 Q. And so your co-worker was writing down answers that my
22 client was giving?

23 A. Yes.

24 Q. Okay. And with respect to the nickname, he then told
25 your co-worker more information about how he got the

1 nickname --

2 A. Yes.

3 Q. -- correct?

4 A. Uh-huh.

5 Q. All right. And this is a lengthy application form, maybe
6 15 or 20 pages; would you agree?

7 A. Yes.

8 Q. And is it fair to say that these pages were all filled
9 out at the same time?

10 A. Yes.

11 Q. All right. And looking at 9-B, also admitted into
12 evidence, it indicates that Mr. Mohamud told you or your
13 co-worker or together that he hailed from -- for a period of
14 time, he hailed from Borama, correct? Do you see that?
15 Right here.

16 A. Yes.

17 Q. Do you see that?

18 A. Yes.

19 Q. And he then told you that he was in a refugee camp from
20 1992 to 1994, correct?

21 A. Yes.

22 Q. He also told you that he supports his mother and his
23 sisters and sends them money each month through a hawala; do
24 you see that?

25 A. Yes.

1 Q. And the next page he in fact told you he went to high
2 school in Borama, Somalia, from 1988 to 1992, correct?

3 A. Yes.

4 Q. Do you see that?

5 A. Yes.

6 Q. He then broke down who he sent money to in terms of
7 family members; do you see that?

8 A. Yes.

9 Q. What did he tell you? Do you remember?

10 A. I recall he mentioned two family members.

11 Q. Okay. Family members in Somalia, correct?

12 A. I don't recall where.

13 Q. He told you that he was a refugee in Pakistan, correct?

14 A. Yes.

15 Q. And that -- he said we were looking for a country and
16 we're grateful to the United States for taking us; he told
17 you that, right?

18 A. Yes.

19 MS. MORENO: May I have a moment, your Honor?

20 THE COURT: Okay.

21 BY MS. MORENO: Q. He then where he was -- in
22 giving you more information about where he was born, he told
23 you that this was, this "jig a jig" (phonetic) is a disputed
24 land area; he told you that, right?

25 A. Yes.

1 Q. That some people consider their land, correct?

2 A. Yes.

3 Q. And then in more detail -- he gave you lots of details
4 about what he was doing during different periods of time. Do
5 you see that?

6 A. Yes.

7 MS. MORENO: Nothing further, your Honor. Thank
8 you.

9 THE COURT: Okay. Ms. Han, anything further? I
10 assume no one else has any examination from the defense.

11 MS. FONTIER: No. Thank you, your Honor.

12 THE COURT: Okay. Very good. Ms. Han, do you have
13 anything further?

14 MS. HAN: No, your Honor.

15 THE COURT: All right. Thank you, Ms. Flores. You
16 are excused. And the government may call its next witness.

17 MS. HAN: Your Honor, the United States calls
18 Citizenship and Immigration Officer Isagani Camangian.

19 THE CLERK: Can you please raise your right hand.
20 Do you solemnly swear that the evidence you shall give in the
21 cause now before the Court shall be the truth, the whole
22 truth, and nothing but the truth?

23 THE WITNESS: I do.

24 Isagani Camangian

25 was called by the government and testified as follows:

1 THE CLERK: Please state your first and last
2 name -- state and spell your first and last name for the
3 record.

4 THE WITNESS: Okay. My first name is spelled
5 Isagani, spelled I-s-a-g-a-n i, last name is Camangian; it's
6 spelled C-a-m-a-n-g-i-a-n.

7 Direct Examination

8 BY MS. HAN: Q. Good afternoon, Officer Camangian.

9 A. Good afternoon, Ms. Han.

10 Q. How is it that you're employed?

11 A. Well, I'm employed as Immigration Service officer under
12 United States Citizenship and Immigration Service.

13 Q. And how long have you worked for the Citizenship and
14 Immigration Service?

15 A. I been work as a adjudicator for, since October of 2001.

16 Q. And what is it that you do as an adjudicator?

17 A. Mainly I do interviews on in form N-400 or application
18 for naturalization.

19 Q. And what are those N-400 applications? What are those?

20 A. These are the forms submitted by an applicant for
21 citizenship.

22 Q. I'm sorry. They're a form submitted by an applicant for
23 citizenship?

24 A. For citizenship, yes.

25 Q. Okay. And I'm going to direct your attention to

1 September 8, 2008. Did you interview a person named Ahmed
2 Nasir Taalil Mohamud about his N-400 application?

3 A. Yes, I did.

4 Q. Okay. I'm showing you Government's Exhibit 11. Officer
5 Camangian, what is Government's Exhibit 11?

6 A. It's N-400 application for naturalization.

7 (Exhibit No. 11 identified.)

8 Q. And looking at the first page of the actual N-400
9 application, do you see your signature there?

10 A. Yes, I do.

11 MS. HAN: The United States offers Government's
12 Exhibit 11 in evidence.

13 MR. DURKIN: No objection.

14 THE COURT: Okay. Exhibit 11 is admitted.

15 (Exhibit No. 11 admitted.)

16 BY MS. HAN: Q. Okay. Can I -- and looking at the
17 first page of Government's Exhibit 11, you said that you saw
18 your signature; is that highlighted there for the jurors on
19 the screen?

20 A. Yes, it is. Yeah, the yellow highlight.

21 Q. And is it -- it's on the right side column in the lower
22 part of that column?

23 A. Yeah, it's on the right side, yes.

24 Q. And when you interviewed Ahmed Nasir Taalil Mohamud, did
25 you also verify that he was the person who had submitted the

1 application?

2 A. I should have asked his driver's license, permanent
3 resident card, or if he has a passport.

4 THE COURT: I assume, counsel, we're dealing with
5 the same circumstances here; this is not an 801 (d) (2) (E) and
6 that a limiting instruction would be appropriate.

7 MS. HAN: No, your Honor. Your Honor, we would
8 need to be heard on that matter.

9 THE COURT: All right.

10 BY MS. HAN: Q. Okay. And as part of reviewing
11 this application with Mr. Ahmed Nasir Taalil Mohamud, did you
12 review part 4 of this application with him?

13 A. Yes, I did.

14 Q. And you are on the second page of the N-400 application
15 in part 4, right?

16 A. Yes, I am.

17 Q. Okay. And we're going to get to the second page of part
18 4 in one second. And where -- using that pointer that you
19 have up there, can you show the jurors where that part 4 is
20 that we're talking about.

21 A. It should --

22 Q. Is that in the lower section of the application or on
23 that page?

24 A. That one there is part 4.

25 Q. Okay. And as part of part 4, did you ask him about his

1 address?

2 A. Yes, I did.

3 Q. Okay. And did he correct his address?

4 A. That's what he provided me the address that I wrote
5 there.

6 Q. And what is the address that you wrote there?

7 A. It should be 2230 South Loera Street, Apartment number
8 105, Anaheim, California, 92802.

9 Q. And turning to part 4-C, did you also ask him about his
10 phone number?

11 A. Yes, I did.

12 Q. And did he also -- what answer did he provide to you
13 about his phone number?

14 A. He provided area code (714) 400-1464.

15 Q. And finally, was he also -- did he also have an
16 opportunity to review those corrections and sign saying that
17 he agreed with the corrections that you had made?

18 A. Before -- it should be -- I should have asked him if he
19 wants -- on part 13, before he signed a sworn statement, I
20 give him a chance to review those corrections.

21 Q. So if I understand your answer correctly, that is -- that
22 is addressed in part 13; is that right?

23 A. Right.

24 Q. Okay. And so turning to part 13, the last page of the
25 N-400 application, and where is -- I think we're going to get

1 a highlight of part 13 of that application. Okay. And so
2 there -- what is part 13 there?

3 A. It's his sworn statement about his application and all
4 the corrections he provided me.

5 Q. Okay. And did he sign under -- in that section in part
6 13?

7 A. Yes, he did.

8 Q. And can you just use the pointer there to show the jurors
9 where that is.

10 A. That one there.

11 Q. And did you also sign there as well?

12 A. Yes, I did that.

13 Q. Okay.

14 MS. HAN: Thank you. I have no further questions.

15 THE COURT: Okay. Mr. Durkin?

16 MS. FONTIER: Your Honor, can we approach just to
17 discuss the elements of this and to relevance to any of the
18 other defendants?

19 THE COURT: Well, I think that's what being
20 reserved at this point, so let's finish with the examination
21 at this time. Mr. Durkin, why don't you proceed with your
22 examination.

23 Cross-Examination

24 BY MR. DURKIN: Q. How do you pronounce your name
25 again?

1 A. My first name is Isagani, last name is Camangian.

2 Q. Mr. Camangian, is that -- did I get it right, Camangian?

3 A. That should be correct, sir.

4 Q. This -- this is an important application, isn't it?

5 A. It is, sir, very important.

6 Q. Because this is a application in which your service
7 determines whether or not someone has sufficient good
8 character to become an American citizen, correct?

9 A. Yes, sir, yeah.

10 Q. And it's your specialty to interview people who want to
11 become citizens, correct?

12 A. It's my -- yeah, it's my -- my -- part of my duty to
13 determine that all the requirements were met to become a
14 citizen, yes.

15 Q. And -- right. And you take your job seriously, don't
16 you?

17 A. Yes, sir, I do.

18 Q. And you actually approved this application --

19 A. Yes, I did.

20 Q. -- for my client's citizenship, didn't you?

21 A. Yes, I did.

22 Q. That's what that yellow mark is up there, right?

23 A. I recommended it for approval, sir.

24 Q. Okay. And one of the things you used to recommend that
25 is the application itself because it's sworn under oath, as

1 Ms. Han asked you, correct?

2 A. Yes, sir, yes.

3 Q. And, in fact, this application -- if I could go to 11-K,
4 there's actually two spots on that last page, page 11-K,
5 where the person certifies or swears and affirms under the
6 penalty of perjury, correct?

7 A. Yeah, the first part there when -- the initial signature
8 when he applied on the top portion.

9 Q. And -- and that date -- he originally applied April 20,
10 2007, correct?

11 A. Yes, it looks like.

12 Q. Okay. And then -- and he swore then that it was all true
13 under penalty of perjury, correct?

14 A. Yes, he did, yeah.

15 Q. And then the second time he did it was in the middle
16 there on September 8 where the red line is where you're
17 showing us now, correct?

18 A. Yes.

19 Q. Okay. And there's also something he has to swear to at
20 the very bottom of that page, correct?

21 A. Yes, sir. That's the oath allegiance that he intend to
22 take that with the judge who will swear him as a citizen,
23 yes.

24 Q. Right. And that's what anybody who gets approved has to
25 do; they have to be able to swear to those things, correct?

1 A. Yeah, he has to sign that before he goes to the judge.

2 Q. And those are things like supporting the constitution,
3 bear arms on behalf the United States, perform noncombatant
4 service in the armed forces, correct? Perform work of
5 national importance under civilian direction when required,
6 correct?

7 A. Yes.

8 Q. Okay. Now, this is a very detailed application, is it
9 not?

10 A. It is, sir, yeah.

11 Q. Let's take a look at page 11-B if we could. I don't
12 think this is --

13 THE COURT: Is this part B or page 11-B?

14 MR. DURKIN: Page 11-B, Judge. It's the second
15 page of the document.

16 THE COURT: I don't have a copy of that either.

17 MR. DURKIN: It's the next --

18 THE COURT: At some point I'll need to see it.

19 MR. DURKIN: It's the next page.

20 THE COURT: Okay.

21 MS. HAN: That's it. No, that's -- I'm sorry. I'm
22 sorry. I was wrong. You were right. It's the one with the
23 yellow marker on it. I apologize.

24 BY MR. DURKIN: Q. At the part 2 at the bottom
25 there, the first question, it says I've been a lawful

1 permanent resident in the United States for at least five
2 years. Correct?

3 A. Yes, sir.

4 Q. That's a minimum requirement before you can apply for
5 naturalization, correct?

6 A. Yes.

7 Q. So he came from this -- based on this record, you found
8 out he came to this country legally, correct?

9 A. Based on this record, he was admitted as a legal resident
10 in March of 2001.

11 Q. Okay. And was that -- do you know whether that was as a
12 refugee?

13 A. It's a refugee, sir, yeah.

14 Q. A refugee from Somalia?

15 A. A refugee from Somalia.

16 Q. And now if we could look at page 11-D, which is the
17 fourth page. That's it. That -- that sets out the places
18 he's lived in the United States since he came here, correct?
19 Right in the middle.

20 A. Yeah, those are the addresses he provided me and he
21 indicate on this application.

22 Q. And that was Arlington, Virginia, Columbus, Ohio, and St.
23 Louis, correct?

24 A. Looks like St. Louis --

25 Q. So St. Louis is crossed out and something like Santa Ana

1 is put in, right?

2 A. Looks like, sir, yeah.

3 Q. Okay. And then underneath that it talks about what he's
4 done since he's been here, correct?

5 A. That was his, yeah, job description.

6 Q. He was first a houseman in Alexandria, Virginia, right?

7 A. Right.

8 Q. Then he worked in the shipping department at PetSmart in
9 Ohio, right?

10 A. Yes.

11 Q. And then he was a driver in St. Louis?

12 A. Right.

13 Q. And then he was a driver in Anaheim, correct?

14 A. Right, sir, yeah.

15 Q. -- for Yellow Cab. Okay. And if we could look at the
16 next page, it mentions who his wife is, correct?

17 A. The bottom page, yes.

18 Q. He has a wife named Asma Abdul Salaam Moosa, correct?

19 A. Yes.

20 Q. And he was married on December 21, 2005, correct?

21 A. Yes.

22 Q. And then if we could go to the next page, he said his
23 wife at that time was residing in Djibouti, correct?

24 A. Yes.

25 Q. And then on the very next page, it talks about a son,

1 correct?

2 A. Yeah, he has a child.

3 Q. Okay. And then there's a bunch of general questions
4 below there, correct?

5 A. Right.

6 Q. And these are important questions for the application,
7 are they not?

8 A. They are.

9 Q. These are questions you pay attention to, correct?

10 A. Indicates, yeah, good moral character, sir, yes.

11 Q. Yes. And it says specifically in number 4, number --
12 yeah, number 4, since becoming a lawful permanent resident,
13 have you ever failed to file a required federal, state, or
14 local income tax return? He says no, he never failed to do
15 that. Right?

16 A. Right.

17 Q. Do you owe any federal, state, or local taxes that are
18 overdue? No. Right?

19 A. Right.

20 Q. And he also said he doesn't have any title to nobility in
21 a foreign country, right?

22 A. That's what he indicated on this application.

23 Q. Do you ever get -- anybody ever answer yes on that? Did
24 you ever have anybody answer yes on that question?

25 A. I think one time -- I heard about it -- it's something

1 from Middle Eastern country to -- he married a service
2 member. She married a service member.

3 Q. All right. By the way, he was a nice man, isn't he?

4 MS. HAN: Objection, relevance.

5 THE COURT: Sustained.

6 BY MR. DURKIN: Q. Let's look at the next page.

7 Now -- and specifically I want to direct your attention to
8 paragraph 9. This too is an important question, correct?

9 A. Right.

10 Q. And it specifically asked whether he's been a member or
11 in any way associated with a terrorist organization, doesn't
12 it?

13 A. Yes, it is.

14 Q. And can you point that one out with your clicker for me.

15 A. Should be the 9-C.

16 Q. 9-C. There it is, right. Okay. And then the next one
17 is number 10: Have you ever advocated either directly or
18 indirectly the overthrow of any government by force or
19 violence, right?

20 A. Right.

21 Q. And he said no. Correct?

22 A. Right.

23 Q. Now, let's look at the next page, particularly questions
24 15 through 21. Do you see those?

25 A. Yes.

1 Q. Now -- and these are under the heading -- if you would,
2 could we go back up a little bit. These are questions that
3 are all under the heading of good moral character, correct?

4 A. Right, yeah.

5 Q. And number 15 is have you ever committed a crime or an
6 offense for which you were not arrested, correct? And he
7 said no. Right?

8 A. That's correct.

9 Q. He'd never been arrested, he'd never been charged with an
10 offense, number 17, convicted of an offense, 18, placed in
11 any alternative sentencing or rehab program. Correct?

12 A. Correct.

13 Q. Never received a suspended sentence or ever been in a
14 jail or a prison. Correct?

15 A. Correct.

16 Q. And then there's a bunch of other questions down on
17 number 22 there about being a drunk or -- and things like
18 that. He answered no to all that. Right?

19 A. Right.

20 Q. Number 23, have you ever given false or misleading
21 information to any U.S. government official while applying
22 for any immigration benefit to prevent deportation,
23 exclusion, removal. Correct?

24 A. Yeah, he answered no.

25 Q. And have you ever lied to anybody to gain admission, and

1 he said no. Correct?

2 A. Correct.

3 Q. Then the very last part, the next page, under -- at the
4 bottom where it says oath requirements, those are the same
5 questions that we talked about before that was on the very
6 last page with respect to the things he has to -- anybody
7 wanting to be a citizen has to swear or affirm that they'll
8 do like serve in the military, bear arms, perform
9 noncombatant services, and the like, correct?

10 A. With a judge, yes.

11 Q. And based on all that, you approved him for citizenship,
12 didn't you?

13 A. Yes, I did.

14 MR. DURKIN: Thank you.

15 MS. FONTIER: Sorry, your Honor. If I may just
16 have a couple of questions.

17 THE COURT: Okay.

18 Cross-Examination

19 BY MS. FONTIER: Q. Officer, good afternoon.

20 A. Good afternoon.

21 Q. Officer, what you're looking at in Exhibit 11 is an N-400
22 form?

23 A. Yes.

24 Q. And as you stated, that is a form that needs to be
25 completed in the process of gaining naturalization for

1 citizenship, correct?

2 A. Yes.

3 Q. And so anyone who was a -- is a naturalized citizen
4 necessarily filled out that form, correct?

5 A. Right.

6 Q. And was approved by you or your office similar to how
7 Mr. Ahmed Nasir Mohamud was approved, correct?

8 A. I recommended for approval.

9 Q. So anyone who actually gains citizenship through
10 naturalization then was approved and then later actually
11 became a citizen, correct?

12 A. Yeah, it will be approved and later on goes to the judge
13 to take their oath.

14 Q. And so anyone then who's a naturalized citizen naturally
15 had to answer all of the questions that Mr. Durkin just went
16 through on that form as well, correct?

17 A. Yes.

18 MS. FONTIER: Thank you. No further questions.

19 THE COURT: Ms. Han, anything further?

20 MS. HAN: Yes, your Honor, briefly.

21 Redirect Examination

22 BY MS. HAN: Q. Officer Camangian, you interviewed
23 Mr. Ahmed Nasir Taalil Mohamud about this application in
24 September of 2008, right?

25 A. Yes, I did.

1 Q. And did he ever tell you that he funded al-Shabaab during
2 that interview?

3 MR. DURKIN: Objection.

4 THE COURT: Basis for the objection?

5 MR. DURKIN: Assumes a fact not in evidence.

6 THE COURT: No, the question is whether or not he
7 mentioned -- he said that to this individual. The objection
8 is overruled.

9 BY MS. HAN: Q. Did he ever tell you that he had
10 funded al-Shabaab?

11 A. No.

12 Q. And did he ever tell you that he had wanted to overthrow
13 the Transitional Federal Government?

14 MR. DURKIN: Same objection.

15 THE COURT: The objection is overruled. There's no
16 evidence in the case at this point, ladies and gentlemen, of
17 either the witness, Mister -- excuse me -- the defendant, Mr.
18 Nasir, being a member of al-Shabaab or advocating the
19 overthrow; there's no evidence of that thus far. But the
20 question is still a proper question. The question is whether
21 or not defendant Nasir indicated an affirmative response or
22 volunteered that type of information.

23 BY MS. HAN: Q. And Mr. Durkin showed you a whole
24 bunch of sections of the application; do you remember that?

25 A. Yes, he did.

1 Q. And to each of those sections defendant Ahmed Nasir
2 Taalil Mohamud responded "no," right, to a lot of those
3 sections, specifically section 9 about if he had been
4 associated with a terrorist organization, any of those kinds
5 of questions?

6 A. All this indicated the checkmark; I asked these questions
7 and he --

8 Q. If he had answered yes, could you approve the
9 application?

10 A. No.

11 Q. And you did approve this application, right?

12 A. I recommended it for approval, yes.

13 Q. And do you know whether or not Mr. Ahmed Nasir Taalil
14 Mohamud ever actually naturalized?

15 MR. DURKIN: Objection. I'd like to be heard.

16 THE COURT: What's the basis for the objection,
17 just the reason, relevance, 403, anything of that nature?

18 THE REPORTER: I'm sorry. I can't hear him.

19 MR. DURKIN: Both.

20 THE COURT: The objection is overruled. You may
21 answer.

22 BY MS. HAN: Q. If you know, do you know whether
23 or not Mr. Ahmed Nasir Taalil Mohamud ever actually
24 naturalized?

25 A. No.

1 THE COURT: When you say no, do you mean you do not
2 know --

3 THE WITNESS: I do not know that he was
4 naturalized.

5 THE COURT: Okay. Very good.

6 MS. HAN: Thank you.

7 THE COURT: Anything further?

8 MS. FONTIER: Not from me, your Honor.

9 THE COURT: Okay. Thank you, sir. You are
10 excused.

11 THE WITNESS: Thank you.

12 MR. COLE: Your Honor, the United States calls
13 Donnah Locsin.

14 MS. FONTIER: Your Honor, I apologize for doing
15 this late, but I would request a limiting instruction as to
16 the prior witness as well.

17 THE COURT: We'll take that up -- is this an
18 individual with any 801 (d) (2) (E) --

19 MR. COLE: No.

20 THE COURT: -- or Bruton issues?

21 MR. COLE: No, no issues.

22 THE COURT: Okay. All right. We'll deal with that
23 at a recess, not take the time of the jury at this point.

24 THE CLERK: Can you please raise your right hand to
25 be sworn. Do you solemnly swear that the evidence you shall

1 give in the cause now before the Court shall be the truth,
2 the whole truth, and nothing but the truth?

3 THE WITNESS: Yes.

4 Donnah Locsin

5 was called by the government and testified as follows:

6 THE CLERK: Thank you. Can you please state and
7 spell your first and last name for the record.

8 THE WITNESS: Donnah Locsin, D-o-n-n-a-h
9 L-o-c-s-i-n.

10 Direct Examination

11 BY MR. COLE: Q. Good afternoon, Ms. Locsin.

12 A. Hello.

13 Q. Could you tell the jury what you do for a living.

14 A. I have a travel agency, and I also have a home for the
15 elderly.

16 Q. I'm sorry. Can you speak up a little bit.

17 A. Is this better?

18 Q. Yes, that's better. Thank you. When was the last -- you
19 said travel agent. What was the next thing you said?

20 A. I have a facility, a home for the elderly.

21 Q. And prior to being involved in the home for the elderly,
22 what were you doing?

23 A. I also had Dollar America Exchange; it was a money
24 transmittal business.

25 Q. Okay. So when you said you had -- Dollar America

1 Exchange?

2 A. Correct.

3 Q. And that was a money transmittal business?

4 A. Yes.

5 Q. And was Dollar America Exchange known by a nickname?

6 A. DAX.

7 Q. DAX?

8 A. Uh-huh.

9 Q. Is that D-A-X?

10 A. D-A-X.

11 Q. What type of a business was DAX? I mean you said money
12 transmittal, but could you explain what that means for the
13 jury?

14 A. People send money to different parts of the world, mostly
15 in the Philippines. We had a license -- right now I'm an
16 agent, but when we were a licensee, we could have agents.

17 Q. Okay. Now, let me back up and ask you, do you know when
18 DAX started as a business?

19 A. 1983.

20 Q. So was this a family business?

21 A. Yes.

22 Q. And when did you yourself first become involved; was it
23 in 1983 or later?

24 A. Later.

25 Q. At what point did you get involved in DAX?

1 A. Me personally?

2 Q. Yes.

3 A. I think it was 2001.

4 Q. 2001? And was -- I think you indicated that DAX was a
5 money transmittal business that served principally the
6 Philippines?

7 A. Correct.

8 Q. And so people in San Diego, for example, could send money
9 to the Philippines through DAX?

10 A. Correct.

11 Q. Now, what was your position when you were at DAX? When
12 you were actually working at DAX yourself, what was your
13 position?

14 A. I was the compliance officer.

15 Q. Compliance officer. And were you also vice-president?

16 A. Correct.

17 Q. And you mentioned something called a license.

18 A. Yes.

19 Q. Actually before we get to a license, let's talk about the
20 geographic scope of DAX. Where was DAX? Where were the
21 headquarters located?

22 A. National City.

23 Q. That's National City here in San Diego County?

24 A. Yes.

25 Q. And did DAX have other offices?

1 A. Agents.

2 Q. Okay.

3 A. We would have agents. In the past we would have other
4 offices, but it was closed long time ago.

5 Q. What do you mean by agents?

6 A. We could have agents. Like Western Union, for example,
7 they can have agents; they could have convenience store carry
8 their name, and they would act as agents.

9 Q. And what would those agents do?

10 A. They could accept money from people and to send to other
11 countries --

12 Q. So DAX --

13 A. -- in behalf of DAX.

14 Q. I'm sorry. So DAX had a business that would transmit
15 money to other places such as the Philippines?

16 A. Correct.

17 Q. And agents of DAX would use the DAX name to accept that
18 money at various locations around San Diego County?

19 A. San Diego County, we would have some agents in Northern
20 California, Los Angeles, but just in California.

21 Q. Now, you referred to being a licenseholder earlier in
22 your testimony?

23 A. Yes.

24 Q. What do you mean by that?

25 A. It means that you're authorized and licensed by the State

1 of California, the Department of Financial Institution, to
2 transmit money to other parts of the world.

3 Q. So to operate -- in order for DAX to operate as a
4 business in California, was it required to have that type of
5 a license?

6 A. Yes.

7 Q. And was that license an easy thing to acquire?

8 A. When it was acquired in 1983, I don't know, but I guess
9 it was very, very easy, but now it is not easy; there's a lot
10 of requirements.

11 Q. And why is it not easy?

12 A. Because you're strictly regulated by the state, and
13 there's a lot of paperwork; there's a lot of things involved.

14 Q. And is there a capital requirement?

15 A. Yes.

16 Q. And by capital requirement, what does that mean?

17 A. You need to have the funds reserved to be able to be
18 approved.

19 Q. So in order to be a licenseholder, you have to have a
20 certain amount of money set aside in reserve to prove to the
21 state that you could make good on the money remittances if
22 something goes wrong?

23 A. Right, or now you can have a bond as well.

24 Q. Now, in order for DAX to function, you were DAX's
25 compliance officer?

1 A. Correct.

2 Q. And what does that mean to be a compliance officer?

3 A. At that time I was checking, making sure that all the
4 requirements as far as ID that was required by the -- not
5 only the state but OFAC to -- and there was an OFAC list;
6 there was a list of names of people that were not allowed
7 to -- not to send but to -- some names on that list cannot --
8 I don't know how to explain it, but --

9 Q. Well, let's back up for a minute and maybe just start
10 with -- before we talk about that list or about compliance,
11 perhaps we should just start with what happens when someone
12 walks into a DAX agent. If someone walks in -- while you
13 were working as the compliance officer, if someone walked
14 into a DAX agent at a convenience store or other location in
15 San Diego, for example, with money to send, what would happen
16 actually -- what is the process when a person comes to the
17 agent?

18 A. They were required to get identification.

19 Q. Who was required to get identification?

20 A. The agent, of the sender -- for example, the California
21 ID or U.S. passport, legal identification -- and then we
22 would make a photocopy of that and keep it on our file. If
23 they send more than a certain amount -- let's say \$3,000 --
24 they -- we are required to get more information, reason for
25 sending, more -- two pieces of ID -- I think it's two -- I'm

1 recalling because it's been a while -- and then we make
2 photocopies of all those, their names, telephone number,
3 address of the sender and the beneficiary --

4 Q. So --

5 A. -- and then we keep it in our file.

6 Q. So when someone would walk into a DAX agent to send a
7 money transfer, the person would provide not only the money
8 but the sender's name?

9 A. Correct.

10 Q. The sender's phone number?

11 A. Phone number, ID.

12 Q. Identification?

13 A. Correct.

14 Q. And you said the beneficiary. Is that the recipient on
15 the other end --

16 A. Correct.

17 Q. -- who's going to get the money?

18 A. Yes.

19 Q. And so they also provide the recipient's name?

20 A. Yes.

21 Q. And then of course they provide the money?

22 A. Correct.

23 Q. And was a record kept by DAX agents of that information
24 being provided about the transaction?

25 A. Was a record kept?

1 Q. Yes.

2 A. Yes.

3 Q. And why was it important for DAX to have those records
4 maintained?

5 A. It's a requirement.

6 Q. So it was a legal requirement?

7 A. It was a legal requirement.

8 Q. And were there other business purposes as well for
9 maintaining records of what money was being deposited and
10 sent?

11 A. Because if there's any questions about it, I will have
12 everything in my file.

13 Q. And how is DAX compensated for sending money?

14 A. We get commissions.

15 Q. And so was it important also to have records of the
16 transactions to know what commission was owed to DAX?

17 A. Correct.

18 Q. Now, you referred as -- when you were talking about
19 compliance, you referred to something called the OFAC list.

20 A. Yes.

21 Q. And is that the Office of Foreign Asset Control?

22 A. Correct.

23 Q. And what did you mean when you were referring to the OFAC
24 list? Can you explain that more?

25 A. There was a list, which we call OFAC list, of people who

1 were not allowed to send money, or if their name was there,
2 we would be more careful, you know, if -- make sure it's not
3 a suspicious transaction and, if it was, decline the
4 transaction. But we would get more ID, reasons, you know,
5 just feel comfortable about the transaction.

6 Q. And as a licensed money remitter, DAX was required to run
7 the transaction names against the OFAC list?

8 A. Yes. There would be filter in our system, as I recall,
9 that if you put in a name on our system, it would know if
10 it -- if it -- that name is -- has a similar name on the
11 list.

12 Q. And have you heard of a Suspicious Activity Report?

13 A. Yes.

14 Q. And can you tell the jury what a Suspicious Activity
15 Report was in the context of DAX.

16 A. It was a report -- in fact, there was a form that was
17 called Suspicious Activity Report wherein if there was a
18 transaction, a transaction that was suspicious, you would
19 have to fill out that form and send it -- I remember sending
20 it electronically to -- I forgot what department it was.

21 Q. But it to a government department?

22 A. Yeah, it was a government department.

23 Q. And I believe you referred earlier to special
24 recordkeeping requirements if a transaction was 3,000 or
25 more? Actually let me back up. If someone walked in to the

1 DAX agent with 3,000 or more dollars, were there special
2 additional recordkeeping requirements for that transaction?

3 A. Yes.

4 Q. And have you ever heard of the phrase "structuring"?

5 A. Yes.

6 Q. And what is structuring, if you can tell the jury.

7 A. From my knowledge structuring was when, you know, you
8 send let's say \$100 dollars now and then you send \$500 later
9 and then send \$1,000 dollars tomorrow, you know, you're
10 keeping it low so that you don't go over the threshold.

11 Q. So if someone had \$3,000 to send through DAX but decided
12 to break it into smaller amounts so it wouldn't appear to be
13 over the \$3,000 limit, is that what you would consider
14 structuring?

15 A. Yes.

16 Q. Was structuring, in your training and work as a
17 compliance officer, was structuring something that you were
18 required to look out for and eliminate if you detected it?

19 A. Yes.

20 Q. Now, have you ever heard of a business named the Shidaal
21 Express?

22 A. Yes.

23 Q. How did you come to first have contact with a business
24 named the Shidaal Express?

25 A. We had the same consultant.

1 Q. And what do you mean the same consultant?

2 A. They were introduced by one of our consultants, Dr. Jaja
3 (phonetic), and I think they were also a client of his.

4 Q. And why were they introduced to you by Dr. Jaja?

5 A. We were trying to expand and get more agents and trying
6 to expand to other countries, and I think they were agents of
7 another transmittal company, and I don't know what happened
8 that they were looking for a licensee, and they were also
9 based in San Diego.

10 Q. So Shidaal Express was also in the money transmitting
11 business but did not have its own license?

12 A. Yes.

13 Q. And it was based in San Diego?

14 A. Correct.

15 Q. And you were looking for another agent?

16 A. Correct.

17 Q. And did in fact -- did in fact Shidaal Express become an
18 agent of DAX?

19 A. Yes.

20 Q. And so it assumed this relationship where it, Shidaal
21 Express here in San Diego, could transmit money to other
22 countries under your license?

23 A. Correct. And they were approved by the Department of
24 Financial Institution.

25 Q. And did DAX do paperwork to have them approved as an

1 agent by the Department of Financial Institutions?

2 A. Correct.

3 Q. I'd like to show you what's been marked as Government's
4 Exhibit 14. Do you recognize that?

5 A. Yes.

6 Q. What is that?

7 A. That is Shidaal's office in San Diego.

8 (Exhibit No. 14 identified.)

9 Q. That's a picture of Shidaal Express's office here in San
10 Diego.

11 A. Correct.

12 Q. And have you been there before?

13 A. Yes.

14 MR. COLE: Your Honor, the government moves to
15 admit Exhibit 14.

16 MS. FONTIER: No objection.

17 THE COURT: Exhibit 14 is admitted.

18 (Exhibit No. 14 admitted.)

19 MR. COLE: Can we publish?

20 THE COURT: Yes.

21 MR. COLE: And, Ms. Alejandre, could you just zoom
22 into the left-hand side just below the clock.

23 BY MR. COLE: Q. Do you see there where it says
24 Shidaal Express, Inc., an authorized agent of DAX?

25 A. Correct.

1 Q. So that was a sign that was put outside Shidaal Express
2 when they became your agent?

3 A. Correct.

4 Q. And once Shidaal Express came an agent of DAX, can you
5 explain how you would do -- how you would conduct the
6 business with the Shidaal Express generally; how did it
7 operate as your agent?

8 A. They would accept money from people to send to the
9 countries where they were sending money, and Shidaal would
10 deposit the money to a DAX account -- and I believe at that
11 time it was Wells Fargo -- and we would transmit or wire the
12 money to Dubai, who will then deliver the money to the
13 beneficiaries.

14 Q. And so when the money was deposited -- collected at the
15 Shidaal Express from the customers, deposited in DAX's Wells
16 Fargo account, it would then be wired to Dubai?

17 A. Correct.

18 Q. And was it wired to Dubai because Shidaal Express itself
19 was part of an international network known as Amal?

20 A. I'm not sure if they were part of Amal, but Amal was its
21 own entity I believe, and they were our delivery agents --

22 Q. I see. So --

23 A. -- for Shidaal.

24 Q. So in order for the money to be delivered to the
25 beneficiaries of the money in the countries it was to go to,

1 the money would go from DAX to Amal?

2 A. Directly.

3 Q. And that was Amal in Dubai?

4 A. Yes.

5 Q. And as you described -- well, was it important then once
6 Shidaal Express was -- became a licensee or -- excuse me, not
7 a licensee -- when Shidaal Express became an agent of DAX,
8 was it important for DAX to have access to the transmittal
9 records for money being sent through Shidaal Express?

10 A. Correct, yes.

11 Q. And was that important for all reasons you've already
12 explained with regards to compliance?

13 A. Yes.

14 Q. And was that also important in regards to determining the
15 proper commissions?

16 A. Yes.

17 Q. And how were the commissions divided between DAX and
18 Shidaal Express, if you recall?

19 A. With Shidaal I think we would get 20 percent of the
20 transaction fee, and they would get 80 percent.

21 Q. So whatever the transaction commission fee was, it was
22 split 80/20 with Shidaal?

23 A. Correct.

24 Q. And as compliance officer was it your job then to have
25 access to Shidaal's remittance transaction records to do your

1 compliance checks as you previously described?

2 A. Yes.

3 Q. And that included special recordkeeping requirements if a
4 transaction exceeded \$3,000?

5 A. Yes.

6 Q. And in order to do that work, were you relying on the
7 information as being -- well, let me back up. Were you
8 yourself in Shidaal Express accepting the money from
9 customers?

10 A. No, I was not accepting money, but I would go there to --
11 to review records.

12 Q. And so you relied on the records that were being
13 maintained by the Shidaal Express --

14 A. Correct.

15 Q. -- in order to do your compliance checks?

16 A. Yes.

17 Q. And that was a regular part of your work?

18 A. It was a regular part of my work. They were trained
19 before they started accepting money in our behalf as our
20 agent; they were trained to do exactly what has to be done.
21 They know all the requirements as far as the IDs and knowing
22 the people, you know, and transactions and being comfortable.
23 They know all the forms that is required by the government.
24 So they know all that. They go through training before they
25 start.

1 Q. Now, did the United States a year or so ago ask you to
2 provide a copy of the Shidaal transactions spreadsheet that
3 you had through your work at DAX? I'll actually withdraw it.
4 Let me show you Government's Exhibit 53. Do you recognize
5 that?

6 A. Yes.

7 Q. And what is Government's Exhibit 53?

8 A. This is a CD of some transactions I think for several
9 months of Shidaal.

10 (Exhibit No. 53 identified.)

11 Q. And did you provide that CD to the United States, to the
12 government?

13 A. To you, yes.

14 Q. Okay. And are your initials on there?

15 A. Yes.

16 Q. And does that CD contain transaction records from the
17 Shidaal Express that you obtained while Shidaal Express was
18 an agent of DAX?

19 A. Yes.

20 MR. COLE: Your Honor, the government moves
21 Exhibit 53 into evidence.

22 MS. FONTIER: Objection, your Honor, as to the
23 information that's contained on this disk as to foundation.

24 THE COURT: You're admitting them under -- seeking
25 to have them admitted under 803 (6)?

1 MR. COLE: Uh-huh.

2 THE COURT: The objection is overruled.

3 BY MR. COLE: Q. Now, Ms. Locsin, I'd like to also
4 show you what's been marked as Government's Exhibit 58.

5 MR. DURKIN: Judge, excuse me. Could we be heard
6 briefly on this?

7 THE COURT: Okay. Well, we'll take our -- we'll
8 take our noon recess -- afternoon recess at this time, ladies
9 and gentlemen. Remember the admonition not to discuss the
10 case or make any decisions at this time. Thank you, counsel.
11 Why don't you come on over here.

12 (Following is a sidebar conference.)

13 THE COURT: Who asked --

14 MS. FONTIER: Can I -- can I always make -- your
15 Honor, my objection was what is on this disk is Shidaal
16 Express records. And I understand that it doesn't
17 necessarily need to be an agent of Shidaal Express, but she
18 hasn't laid the foundations as to what these records are, if
19 they were made contemporaneously -- especially if these were
20 made contemporaneously with the records as they're indicated.
21 I don't think she has the ability to do that; that's why --

22 THE COURT: She doesn't have to sit there; you
23 understand that.

24 MS. FONTIER: I understand that, but she --

25 THE COURT: And if Shidaal is her agent and she's

1 instructed Shidaal on how to keep records and she's been
2 there -- I think the evidence already was that she was there
3 for a period of time.

4 MR. DRATEL: No, not at Shidaal.

5 MR. COLE: If you want me to lay the exact --

6 THE COURT: Well, I thought that's what the
7 testimony was.

8 MR. COLE: No, she covered Shidaal -- those records
9 are only when she had a relationship with Shidaal.

10 THE COURT: Right, couple months, and that's all
11 that's on the CD.

12 MR. COLE: No, it was more than a couple months,
13 but she obviously doesn't have any records of Shidaal when
14 she wasn't involved with it; it was when they were an agent
15 of DAX.

16 THE COURT: That's my understanding. That's what's
17 on the CD.

18 MR. COLE: Yes.

19 MS. FONTIER: But what she can't -- what I'm
20 objecting to, I don't think she can testify as to when those
21 records were made that they were made contemporaneously with
22 what is recorded, which is one of the elements of a business
23 order foundation.

24 MR. COLE: My response would be that she doesn't
25 have to. They became part of her records, DAX's. If you

1 take records and make them the regular part of your business
2 records, which they were, it doesn't matter.

3 THE COURT: You need to -- you need to elicit some
4 testimony regarding the reliability of the records, that is,
5 that they were made by the DAX agent reflecting what they
6 purport to reflect. I mean it's my understanding that she
7 indicated -- I might have -- I might have gone too far in my
8 assumption -- that she indicated that she had actually
9 trained these individuals --

10 MR. COLE: She did.

11 THE COURT: -- and that she was there monitoring
12 that process and that somehow, by implication, she satisfied
13 herself that they would -- that they would keep records in
14 the manner in which she had trained them --

15 MR. COLE: I could --

16 THE COURT: -- in the ordinary course of business.
17 Get that straightened out. I'm going -- I think you need a
18 little bit more foundation then.

19 MR. COLE: Okay. But the one point I just want to
20 make, your Honor, is we're not vouching for the accuracy of
21 the records. Our evidence is that they would sometimes lie
22 on their records --

23 THE COURT: I understand.

24 MR. COLE: -- and that goes to the weight, not
25 to --

1 MS. MORENO: Goes to admissibility.

2 THE COURT: She was saying that she relied on it.

3 MR. COLE: Yes, yes.

4 THE COURT: Okay. That's -- I think you need a
5 little bit more foundation that at least what's on there is
6 the type of information that she trained these people on --

7 MR. COLE: Okay.

8 THE COURT: -- the kind information she relied on.
9 Not that they're accurate. Obviously they may not be
10 accurate.

11 MR. DRATEL: Your Honor, I think the whole purpose
12 of hearsay rules and the exceptions is not a question of to
13 allow wholesale unreliable records in, the whole purpose of
14 them is if there's indicia of reliability from the way
15 they're prepared, who prepared them, and who vouched them.

16 THE COURT: These aren't being offered for the
17 truth of the matter necessarily.

18 MR. DRATEL: They are if they're not hearsay.

19 THE COURT: Then they're not hearsay --

20 MR. DRATEL: No, no, no, that's not what I'm
21 saying.

22 THE COURT: If they're not being offered for the
23 truth of the matter, if they're -- if they're being offered
24 for the mere fact that these records --

25 MR. COLE: Yes.

1 THE COURT: -- were made, then they have
2 independent --

3 MR. GHAPPOUR: One thing on the fact that they were
4 made, I believe, yeah, that the CD contains one or two
5 spreadsheets. There's known indication of a contemporaneous.

6 MS. FONTIER: Contemporaneous.

7 MR. GHAPPOUR: -- that they were conducted in any
8 form of --

9 THE COURT: Spreadsheets or records made from
10 records are covered as long as you have --

11 MR. COLE: I can ask more questions.

12 THE COURT: Go ahead, lay a better foundation. I
13 think we need the better foundation. Let's --

14 MR. COLE: The reason -- sorry.

15 THE COURT: Go ahead. All right.

16 MR. COLE: The reason -- the reason, your Honor,
17 that the issue about limiting instructions, you know, the
18 phone numbers, the reasons for the nickname and phone numbers
19 is what we really were going for. They can turn into of
20 course a lot of other things on cross. The nicknames and
21 phone numbers are just to tie the phone calls, which are
22 relevant to everything to show who has what phone number and
23 who has what nicknames. That's why we were doing that. It's
24 generally applicable. All the stuff that happened in
25 cross-examination is fine, but it wasn't the purpose.

1 THE COURT: It would have been nice to get a little
2 bit of a head's up on that.

3 MS. HAN: Okay.

4 MR. DRATEL: Your Honor, it's still a statement by
5 co-defendant benefit that's being used against me.

6 THE COURT: It's interesting that nobody objected
7 to that before I raised it myself, but it can be
8 conditionally admitted. I'll --

9 MR. COLE: Okay.

10 THE COURT: -- modify that -- that instruction.
11 Not everything can be -- there's got to be some statement --
12 the initial statement made under 801 (d) (2) (E) comes in at
13 some point in time. You can always say wait a minute, you
14 know, how can that relate to -- there's no other evidence,
15 how can that relate to my client. So typically initial
16 statements under 801 (d) (2) (E) are admitted. If they're not
17 connected and you don't have independent corroboration of the
18 existence of a conspiracy, you've got to deal with that
19 later.

20 MR. DRATEL: I'm not talking about corroboration.
21 I'm talking about furtherance.

22 THE COURT: Well, I understand. Well --

23 MR. GHAPPOUR: And no indicia of trustworthiness
24 because they were prepared by, I'm assuming --

25 MR. DRATEL: We're talking about records --

1 (Simultaneous speakers.)

2 THE COURT: No, we can't all --

3 MS. FONTIER: Off the record.

4 THE COURT: No, we're not off the record.

5 MS. FONTIER: Back on.

6 THE COURT: Okay. Take a couple of minutes for
7 yourselves.

8 (Sidebar conference concludes.)

9 THE COURT: On the amounts that were allegedly sent
10 through the hawala through Shidaal -- and they're listed --
11 obviously they're listed in the indictment -- I assume that
12 even though you're not going to take it up with this witness,
13 that the intercepts make reference to each and every one of
14 those transitions, those amounts, and that -- in other words,
15 they're connected up to what's on the CD.

16 MR. COLE: That's the goal, yes, your Honor.

17 THE COURT: But you -- assuming those records come
18 in, the dates and amounts and people indicated would
19 correspond to what is going to be reflected on these records?

20 MR. COLE: Yes, although they don't always read --
21 it's not going to read every column call on the record. I
22 mean on the phone they talk more globally and maybe use like
23 a round dollar amount of whatever, but we find each
24 transaction that we're going to focus on in the phone calls
25 in our opinion. They may disagree.

1 THE COURT: All right.

2 MR. COLE: And I can -- I can lay plenty more
3 foundation with her. I'll ask her.

4 THE COURT: That's fine. I just had a question
5 about that. I assume the amounts and the dates tracked with
6 what's reflected on these records. Perhaps, perhaps not. It
7 just a question I'm asking at this point. Okay.

8 MS. FONTIER: Sorry, your Honor. I do just want to
9 follow up on --

10 THE COURT: No, no, no follow-up at this point.
11 We're going to take a recess, allow people to take a recess.
12 We'll deal with that later on if we need to. But for now the
13 ruling is what it is, and any other instructions or limiting
14 constraints will come later. I mean is there anything else
15 that could conceivably be objected to on the basis of what we
16 heard here at the side of the bench?

17 MS. FONTIER: I just wanted to note out loud that,
18 you know, the government is saying they're putting these
19 records in because they're going to tie these records to the
20 transactions --

21 THE COURT: No.

22 MS. FONTIER: -- that are in the indictment but
23 then they said they're not putting in -- they're arguing that
24 they're not reliable, so I'm totally confused about what the
25 purpose of these records is.

1 MR. COLE: Well, your Honor, the records -- it's
2 like bank records; they go on and on for pages. But there
3 are certain ones and entries that we care about.

4 THE COURT: That's fine. I shouldn't have even
5 asked the question.

6 MR. COLE: Oh, I'm sorry.

7 THE COURT: I didn't mean to open up a can of worms
8 here. I was just curious as to how -- what other evidence
9 would do by way of corroboration of certain alleged
10 transactions on the CD. That's all. We don't need to get
11 into that again.

12 MR. DURKIN: Judge --

13 THE COURT: Hold on, Mr. Durkin. Is it on this
14 subject?

15 MR. DURKIN: Yes.

16 THE COURT: Okay. Go ahead.

17 MR. DURKIN: Maybe this got said, but I just want
18 to make my position clear here. I don't believe the
19 government is going to be able to show that the person that
20 created the records that Locsin is talking about was under an
21 obligation to do so accurately as the rules requires. I just
22 don't think that's going to be --

23 MR. COLE: The rule doesn't require that.

24 THE COURT: That's not a proper foundation. Once
25 again, your foundation is based on ultimately what your

1 perception of the proof may be, what the ultimate proof, what
2 the ultimate facts may be. As long as there's sufficient
3 evidence to allow a reasonable jury to conclude that the
4 transactions were reflected in the manner in which the
5 employees were instructed, that's fine. You may punch holes
6 in that in cross-examination, but at least --

7 MR. COLE: Your Honor, I just want to say on that
8 one point, I don't even think the foundation requires that
9 because it could be the transactions were not done right.
10 The point is were these in fact the regularly maintained
11 records of the business. If you have an employee that's
12 embezzling at a bank, for example, it's still the regularly
13 maintained records of the business. That's --

14 THE COURT: Lay your further foundation, okay, and
15 we'll proceed from there. And take a few minutes because the
16 jury's coming back in literally about five --

17 MR. DRATEL: Your Honor, can I literally take ten
18 seconds just to articulate my -- based on that you can't
19 enter -- you can't introduce something as a business record
20 if it's -- if you're also conceding that it's not reliable.
21 The whole purpose of the hearsay exceptions are to permit
22 records that have an indicia of reliability.

23 THE COURT: That I understand.

24 MR. DRATEL: Okay.

25 THE COURT: Thank you.

1 MR. DRATEL: Thank you.

2 (There was a break in the proceedings.)

3 THE COURT: Okay. Thank you, ladies and gentlemen.
4 Couple of things. First of all, with respect to Exhibits 29
5 and 9, I'm being informed that they may not be organized in
6 the way in which they were intended in the notebooks, so we
7 need to look into that, Ms. Han.

8 MS. HAN: Yes, your Honor.

9 THE COURT: Okay. And I think the defense may have
10 a question about that as well, so we just need to make sure
11 that we're all on the same page, so to speak.

12 MS. HAN: Yes, your Honor.

13 THE COURT: All right. Ladies and gentlemen of the
14 jury, I want to modify an earlier instruction that I gave
15 you. When Ms. Flores, Concepcion Flores, the first
16 Citizenship and Immigration Services officer was testifying,
17 she was testifying as to the forms that were filled out by
18 defendant Mohamud, Mohamad Mohamad Mohamud, and you heard a
19 lot of information and saw a lot of information contained on
20 those forms. And after the witness completed her testimony,
21 I told you that you could consider the testimony only as to
22 the case concerning defendant Mohamud. I'm going to modify
23 that a bit -- and I may have further instruction for you on
24 this -- on this issue -- but I want to get to it now so it's
25 fresh in your mind if you want to make any changes in your

1 notes, reflections in your notes, you can do that.

2 The information on the forms and the testimony that
3 related to telephone numbers and nicknames are not the
4 subject of the limiting instruction. So telephone numbers
5 and nicknames may be considered beyond just the case
6 concerning Mr. Mohamud for whatever consideration you deem it
7 deserving of. With respect to all the other personal
8 information aside from telephone numbers and nicknames, I
9 believe at this point that's relevant only to defendant
10 Mohamud, so the limiting instruction would still apply.
11 Okay.

12 So you've returned, and Ms. Locsin is going to
13 continue her examination. We're still going to hear some
14 additional testimony on direct examination concerning this CD
15 that earlier reference was made to, so.

16 MR. DRATEL: Your Honor, just wanted to make sure
17 my objection with respect to the instruction --

18 THE COURT: Mr. Cole, are you ready to proceed?

19 MR. COLE: Yes, your Honor.

20 BY MR. COLE: Q. Ms. Locsin, we were talking about
21 Exhibit 53, which I think is still in front of you. Do you
22 see that there?

23 A. Right.

24 Q. Is that that purple disk?

25 A. The CD?

1 Q. Yes. I'm going to ask some more questions about that,
2 but first let me ask you, do you recall approximately when
3 DAX -- excuse me -- approximately when Shidaal Express became
4 an agent of DAX?

5 A. I think it was March of -- was it 2009?

6 Q. So it was March of the year, you don't recall exactly the
7 year?

8 A. No.

9 Q. Do you recall when they stopped being your agent?

10 A. It was November, November 20, '09.

11 Q. Okay.

12 A. I don't recall the years, but I remember it was November.

13 Q. So in November -- your best recollection is in November
14 of 2009 they became -- they stopped being your agent?

15 A. I'm not so sure about '09.

16 Q. Okay. Okay. So they began on a March date, and they
17 ended on a November date?

18 A. November.

19 Q. Okay. Would it -- well, let me ask a few more questions.
20 How would you -- when they were your agent, how would you get
21 access to their records, the transmittal records?

22 A. We would have access on the computer, the actual
23 transactions.

24 Q. And what do you mean by that? Explain.

25 A. We could actually go in the system and look at each

1 transaction.

2 Q. And did you have to go to DAX -- excuse me. Would you
3 have to go to Shidaal's office every time to look at the
4 records?

5 A. No.

6 Q. You could do that from DAX's office?

7 A. From my office.

8 Q. And so would you log into a web-based --

9 A. Right.

10 Q. Excuse me. We have to -- let me finish the question.

11 A. Sorry.

12 Q. No, that's okay. Would you log into a web-based database
13 to access the transmittal records for Shidaal Express?

14 A. Yes.

15 Q. And was that actually a web-based system maintained by
16 Amal?

17 A. Yes.

18 Q. And so -- and that Amal you stated was this international
19 transmittal organization that you would wire the money to
20 at -- that was deposited into your account for the Shidaal
21 records; is that right?

22 A. Correct.

23 Q. And so would the employees at Shidaal then enter the
24 transaction records into the Amal web-based system?

25 A. Yes.

1 Q. And then you as the agent could access those records
2 directly anytime you wanted to?

3 A. As a licensee.

4 Q. Sorry, as the licenseholder?

5 A. Yes.

6 Q. You could assess those records anytime you wanted to to
7 see exactly what transmittal records -- exactly what
8 transmittances -- or remittances were being made from Shidaal
9 Express?

10 A. Correct.

11 Q. And would you in fact routinely access the Amal records
12 to review the transactions that were taking place at your
13 agent, Shidaal Express?

14 A. Yes.

15 Q. And how often were you doing that? Were you doing that
16 monthly, weekly, daily?

17 A. We have to do it daily.

18 Q. So daily you were accessing the Amal database to see the
19 Shidaal transactions?

20 A. Correct.

21 Q. And did you use those records to balance the books, to
22 balance the money being deposited from Shidaal Express into
23 DAX's account with the money that was to be sent to Dubai for
24 transmittal?

25 A. Correct.

1 Q. And did you use those records also to calculate the
2 commissions?

3 A. Yes.

4 Q. And did you in fact balance the books by using those
5 records?

6 A. Yes.

7 Q. And how were the agents of DAX -- excuse me -- how were
8 the agents of Shidaal Express trained in records. Were they
9 supposed to enter transmittal records two months after the
10 transaction or when the transaction is taking place for the
11 money to be sent?

12 MS. FONTIER: Objection, leading.

13 THE WITNESS: Point of transaction.

14 THE COURT: Well, the question "or" makes it okay.
15 You can answer that.

16 THE WITNESS: When the transaction --

17 THE COURT: You want to repeat the question, Mr.
18 Cole, just so --

19 MR. COLE: Yeah.

20 BY MR. COLE: Q. Did you train the Shidaal Express
21 employees to enter transactions months later whenever they
22 wanted or when the money was being received for
23 transmittance?

24 A. When the money was being received.

25 Q. And was it important that the records be entered

1 contemporaneously with the transaction?

2 A. Right away.

3 Q. And why is that?

4 A. Because you receive money from a customer. It has to be
5 entered on the computer. It has to be sent.

6 Q. And how then did you obtain the spreadsheets that are on
7 the disk? Was that from the Amal website?

8 A. From the Amal website.

9 Q. And how would that process take place? Would you or
10 someone, your secretary do that?

11 A. Yes.

12 Q. How did that --

13 A. I did not do it myself, but I have someone at my office
14 at that time who would transfer it to an Excel spreadsheet.

15 Q. And that was so that you could do your routine work on
16 daily basis with the records of the Shidaal Express?

17 A. Correct.

18 MR. COLE: Your Honor, the government moves
19 Exhibit 53 into evidence.

20 MS. FONTIER: Objection, foundation as to who
21 created them. 2009 is not relevant.

22 THE COURT: The objection is sustained only on the
23 basis of the context of time. If we can get it clarified
24 that this was the --

25 BY MR. COLE: Q. Would it refresh your

1 recollection to actually open the disk and look at it on the
2 computer for a moment to remind yourself -- would that
3 refresh your recollection as to the time period covered?

4 A. Sure.

5 THE COURT: Yeah, if you could speak up, once
6 again, that would be appreciated. Thank you.

7 THE WITNESS: All right.

8 BY MR. COLE: Q. And could you come down off the
9 stand for a moment to come and look at the spreadsheets. Ms.
10 Locsin, if you'll not say anything yet, but just take a
11 moment to look at where the spreadsheets begin and end if
12 that would refresh your recollection, and then I'll ask you
13 another question. Does that in fact refresh your
14 recollection?

15 A. Yes.

16 Q. And has it been several years since these things
17 happened?

18 A. Several years.

19 Q. And when did the records begin then that -- when Shidaal
20 Express was operating as an agent of DAX?

21 A. March of 2008.

22 Q. March 2008. And when did they end?

23 A. November of 2009.

24 Q. Okay. Thank you.

25 MR. COLE: Your Honor, the government moves

1 Exhibit 53.

2 MS. FONTIER: I still object as to who created and
3 the trustworthiness.

4 THE COURT: The objection is overruled, and Exhibit
5 53 is admitted.

6 (Exhibit No. 53 admitted.)

7 MR. COLE: Thank you, your Honor.

8 BY MR. COLE: Q. Now, I'd like to show you what's
9 been marked as Government's Exhibit 58. Showing you what's
10 marked as Government's Exhibit 58, can you take a look at
11 those pages. Have you had a chance to do that, to look that
12 over?

13 A. Yes.

14 Q. And do you recognize what type of document this is?

15 A. This is a transaction record log.

16 (Exhibit No. 58 identified.)

17 Q. And what is a transaction -- without describing what's on
18 this particular example, what is a transaction record log?

19 A. It involves transactions that are \$3,000 or more.

20 Q. And was this a special record, a record log that was kept
21 by DAX for transactions that its agents took in for 3,000 or
22 more?

23 A. Yes.

24 Q. And is what's marked as Exhibit 53 in fact one of those
25 transaction record logs but with the personal's -- with the

1 individual's personal information redacted or blacked out?

2 A. I don't --

3 Q. Bad question. That particular exhibit in front of you
4 has the personal information blacked out; do you see that?

5 A. Correct.

6 Q. But apart from the blacking out of the personal
7 information, is that in fact a true and correct copy of a
8 transaction record log maintained by DAX?

9 A. Yes.

10 Q. And you said this was the type of record that would be
11 kept by DAX for transactions of 3,000 or more?

12 A. Correct.

13 Q. And was that what DAX trained all of its agents to do?

14 A. Yes.

15 Q. Including the Shidaal Express?

16 A. Yes.

17 Q. And in fact is this example --

18 MR. COLE: Well, your Honor, the government moves
19 Exhibit 58 into evidence.

20 MS. FONTIER: Your Honor, if I may just review the
21 redactions. We have an unredacted copy and much of it is
22 irrelevant, so I just want to make sure what is actually
23 redacted and what --

24 MR. COLE: It was personal information about a
25 third party, name, date of birth.

1 THE COURT: Do you have a copy you could quickly
2 show counsel?

3 MS. FONTIER: My only objection is to relevance.

4 THE COURT: The objection is overruled conditioned
5 upon a motion to strike if it turns out not to be relevant.
6 You may -- it's admitted at this time.

7 (Exhibit No. 58 admitted.)

8 BY MR. COLE: Q. So I'd like to show you then the
9 first page of Exhibit 58. Try to zoom. Can you read --
10 well, looking right where it says transaction record log,
11 does it say "this log must be used to record transactions
12 that involve \$3,000 or more regardless of the method of
13 payment as required by the Department of the U.S. Treasury."
14 Does it say that?

15 A. Yes.

16 Q. And it follows by saying "We must keep this form for five
17 years from the date of transaction"?

18 A. Yes.

19 Q. And in the top right-hand corner, it indicates that the
20 location of this particular transaction was Shidaal?

21 A. Correct.

22 Q. And looking at page 2 -- I'm sorry -- page 4, the last
23 page of the exhibit, I see that attached to this transaction
24 record log was a remittance application form; is that right?

25 A. Yes.

1 Q. What is a remittance application form? What is this
2 document?

3 A. That should -- that should be a receipt.

4 Q. So what do you mean by receipt?

5 A. Receipt is what you give to the sender, that they had in
6 fact given you that money.

7 Q. So when someone comes into the Shidaal Express or another
8 DAX agent, in addition to inputting information into the
9 computer, a paper receipt is created?

10 A. Correct.

11 Q. And a copy of the paper receipt is maintained by the
12 agent and also given to the customer?

13 A. Correct.

14 Q. And so if a transaction is \$3,000 or more, DAX has to
15 keep a copy of the receipt as well?

16 A. Correct.

17 Q. And was -- was that something that the agents of the
18 Shidaal were trained to do?

19 A. Yes.

20 MR. DURKIN: Judge -- Judge, can I have a second to
21 speak to Mr. Cole?

22 MR. COLE: Your Honor, we wanted to stipulate the
23 parties -- just to make it perfectly clear -- this is an
24 example of a log. It has nothing to do with these four
25 clients.

1 THE COURT: I was going to ask if this was an
2 exemplar --

3 MR. COLE: It's an exemplar.

4 THE COURT: -- used as an exemplar, hence the
5 reaction of personal information. Okay.

6 MR. COLE: Nothing further, your Honor.

7 THE COURT: Any cross-examination?

8 MS. FONTIER: Please, your Honor.

9 Cross-Examination

10 BY MS. FONTIER: Q. Good afternoon, Ms. Locsin.

11 A. Hello.

12 Q. I'm a little bit shorter than Mr. Cole. Ms. Locsin, you
13 said that DAX, the Dollar American Exchange, had been a
14 family business, correct?

15 A. Right.

16 Q. And that the business was started by your family in 1983?

17 A. Correct.

18 Q. And who started the business?

19 A. My mother-in-law.

20 Q. And so -- I'm horrible at math, but by 2007, fair to say
21 that that company had been in your family for a couple of
22 decades?

23 A. Correct.

24 Q. And it was family run and operated for all of those 20
25 some years?

1 A. We were involved just later. I don't know who was
2 managing before us.

3 Q. But from 1983 until 2007, your family had been
4 operating --

5 A. My mother-in-law was always involved.

6 Q. Right. And you were personally involved starting when?

7 A. I think it was 2001 when I started working part time at
8 the bank.

9 Q. And your husband also was working for DAX; is that
10 correct?

11 A. Correct.

12 Q. And in 2007 -- sorry, withdrawn. You also stated on
13 direct that it was becoming -- is now more difficult to have
14 a license, a money remitting license, correct?

15 A. Correct.

16 Q. And the requirements for that have changed and become
17 more strict over time, correct?

18 A. Correct.

19 Q. Now, in 2007 the requirements for maintaining that
20 license also changed, had changed, correct?

21 A. I don't know what year it changed, but it constantly
22 changes.

23 Q. There did come a point in time where they increased --
24 the auditors for -- the people that are -- the authority that
25 maintains these licenses increased the amount of capital from

1 500,000 to \$1 million or -- I'm sorry -- increased the amount
2 of capital that that company needed to have to \$500,000; is
3 that correct?

4 A. To 500?

5 Q. Yes.

6 A. I'm not sure exactly the amount, but I remember they had
7 to increase it.

8 Q. So it was a very high amount of capital that the company
9 needed to maintain, right?

10 A. Yes.

11 Q. And in and around 2007, DAX was having trouble
12 maintaining that amount of capital, correct?

13 A. I don't know if we were having trouble, but we were -- we
14 would lose our license if we would not comply; but we did
15 not, so I guess we were complying.

16 Q. And you'd said you were trying to expand to bring in
17 other agents and to expand into other countries, correct?

18 A. Correct.

19 Q. And by bringing in other agents, some of that would be to
20 increase your capital, correct?

21 A. I don't believe so.

22 Q. Now, when you -- speaking specifically about Shidaal
23 Express, are you familiar with how they became one of your
24 agents?

25 A. Can you say that, can you ask that again?

1 Q. Are you familiar -- do you remember the time when you
2 took them on as an agent?

3 A. I believe so.

4 Q. Were you part of the negotiations for that deal, for
5 bringing them on as an agent?

6 A. As an agent, yes.

7 Q. And did you meet personally with the people from Shidaal
8 Express that eventually entered into an agreement with DAX?

9 A. Yes.

10 Q. And a Mohamed Ahmed was one of those people, correct?

11 A. Mohamed who?

12 Q. Mohamud Ahmed. Sorry.

13 A. Mohamud.

14 Q. Mohamud Ahmed?

15 A. Ahmed, yes.

16 Q. Yes. He was one of the people from Shidaal Express that
17 you made an agreement with, correct?

18 A. Yes.

19 Q. And was an Abdi Hussein the other person?

20 A. Abdi?

21 Q. Abdi.

22 A. Yes.

23 Q. Yes. Okay. And now you made an agreement with
24 Mr. Mohamud Ahmed that he would provide \$500,000 in capital
25 to DAX, correct?

1 A. We were trying to make them -- they were trying to get
2 their own license, and so we were -- we had to apply to the
3 Department of Financial Institution for them to be part of --
4 for them to put in money to the company, and they would have
5 to be approved as part of the company.

6 Q. And wasn't the agreement that Mohamud would provide
7 \$500,000 in order to become an agent of DAX?

8 A. Not agent. He was already an agent. To become an agent
9 you don't need to provide any money. But to be a partner --
10 he wanted to be a licensee, part of the company.

11 Q. Okay. And the agreement for him do that was to provide
12 \$500,000, correct?

13 A. I can't recall the exact amount, but it was a amount that
14 was required by the Department of Financial Institution.

15 Q. And now, do you recall in June of 2010 being interviewed
16 by the FBI?

17 A. I don't recall the date, but I remember being interviewed
18 by the FBI.

19 Q. Do you remember being asked questions about Mr. Mohamud
20 as you call him?

21 A. Yes.

22 Q. I'm just going to show you a document.

23 THE COURT: Did you see that, counsel?

24 MR. COLE: I did.

25 THE COURT: Okay.

1 BY MS. FONTIER: Q. Now, without actually reading
2 out loud, if you can look at the bottom paragraph on the
3 first page, if you can just read that over.

4 A. Okay.

5 Q. That was the first -- now that you've read that, does it
6 refresh your recollection as to the nature of the agreement
7 between DAX and Mohamud?

8 A. If they became partners of DAX, the DFI required \$1
9 million as a capital requirement, but it was a DFI
10 requirement.

11 Q. And that was going to be difficult, so Mr. Mohamud agreed
12 to provide \$500,000 to be a 49 percent shareholder, correct?

13 MR. COLE: Objection, relevance.

14 THE COURT: Overruled. You may answer if you can
15 recall, if you're --

16 THE WITNESS: I don't know if --

17 THE COURT: -- aware of how difficult it was or was
18 not.

19 THE WITNESS: I don't know if it was difficult for
20 him. He was -- the only thing we did at that time was to
21 make sure that it was approved by the Department of Financial
22 Institution. The application alone is a lot, and the
23 requirements was tremendous, and so if it was difficult for
24 him to obtain that -- that requirement from the department, I
25 wasn't sure, but he did not comply with it. He was approved

1 though by the department.

2 BY MS. FONTIER: Q. Well, when you were speaking
3 to the FBI agent in June of 2010, didn't you tell them that
4 Mohamud said it was going to be difficult to provide a
5 million dollars but that for a 49 percent share, he would
6 provide \$500,000?

7 MR. COLE: Objection; calls for hearsay.

8 THE COURT: The objection is sustained.

9 BY MS. FONTIER: Q. I'm asking what you said
10 specifically to the FBI.

11 MR. COLE: Same objection.

12 THE COURT: It contains hearsay within the
13 statement.

14 BY MS. FONTIER: Q. Now, moving on, you did enter
15 into an agreement, DAX and Mohamud, regarding Shidaal
16 Express, correct?

17 A. If they get approved by the department. Everything was
18 relied on the approval of the department.

19 Q. At some point you entered into an agreement with Mohamud,
20 correct?

21 A. What kind of agreement?

22 Q. Between Shidaal Express and DAX.

23 A. As an agent?

24 Q. Yes.

25 A. Yes.

1 Q. And then you had a specific agreement with Mr. Mohamud,
2 correct?

3 A. Correct.

4 Q. And Abdi Hussein was the vice-president of Shidaal?

5 A. Abdi, yes.

6 Q. Abdi, yes.

7 A. Yes.

8 Q. And they acted as your agents, correct?

9 A. Correct.

10 Q. And isn't it also true that Mr. Mohamud kept telling you
11 that he was going to give you the \$500,000?

12 MR. COLE: Objection; relevance, hearsay.

13 THE COURT: It's not hearsay. The objection is
14 overruled.

15 THE WITNESS: It was a requirement by the
16 department for him to inject that money.

17 THE COURT: Ma'am, that wasn't the question. The
18 question --

19 THE WITNESS: Can you repeat the question, please.

20 THE COURT: Hold on, hold on. It's a lot easier if
21 there's only one person speaking at a time, okay? All right.
22 The question is a simple question: Did Mr. Mohamud keep
23 telling you that he would be able to raise 500,000 or not be
24 able to raise 500,000?

25 THE WITNESS: He would be able to.

1 THE COURT: He told you that?

2 THE WITNESS: He told us and he told the
3 department.

4 BY MS. FONTIER: Q. And he never actually provided
5 you that money, right?

6 A. No.

7 Q. You extended the time period for him to give it to you,
8 and he didn't do it, correct?

9 A. Correct.

10 Q. And that ultimately meant that he was not going to be
11 licensed in your business, correct?

12 A. I did not extend. It the Department of Financial
13 Institution did.

14 Q. And despite his promises that he was going to provide
15 \$500,000, he never provided that money, correct?

16 MR. COLE: Objection; relevance, your Honor.

17 THE COURT: I don't see what the relevance of that
18 is, Ms. Fontier.

19 MS. FONTIER: If you give me a couple of more
20 questions, it will become apparent I believe, your Honor.

21 THE COURT: Okay.

22 THE WITNESS: Can you repeat your question, please.

23 BY MS. FONTIER: Q. Despite Mr. Mohamud telling
24 you repeatedly that he was going to provide the money and
25 telling the department to provide the money, he didn't do it,

1 correct?

2 A. No.

3 Q. So in fact when he said that, it was not truthful,
4 correct?

5 MR. COLE: Objection, relevance.

6 THE COURT: The objection is sustained.

7 MS. FONTIER: I'll come back to this in a moment
8 then, your Honor, if I can.

9 BY MS. FONTIER: Q. The records that you've
10 testified about, the Shidaal Express records, those were
11 provided to you or you received them from the Shidaal
12 computers, correct?

13 A. Correct.

14 Q. But you weren't there when the entries were made into the
15 system, correct?

16 A. No.

17 Q. So you don't know what information was provided to the
18 person who entered the information, right?

19 A. No.

20 Q. So when the entries into the Shidaal computers are made,
21 you were not present, right?

22 A. No.

23 Q. So you don't know who's standing in front of the person
24 that enters the information, right?

25 A. No.

1 Q. You don't know what is actually given to that person,
2 correct?

3 A. No.

4 Q. You don't know what is said to that person?

5 A. No.

6 Q. You don't know if they checked IDs, correct?

7 A. I would know that because they have to provide it to me
8 if I ask.

9 Q. But when that is actually happening, you don't see the
10 actual identification that is provided, correct?

11 A. No, only a fax or a copy.

12 Q. And you don't know -- if somebody walks in with \$1,000,
13 and they say please send this \$1,000 to person X, you don't
14 know what precisely the person entering the information types
15 down, correct?

16 A. No.

17 Q. So you have no way of verifying whether the information
18 in the computer is what the person talking to them said,
19 right? All you know is that it was entered in the computer.

20 A. Correct.

21 Q. And you are, again, not the person who did that, right?

22 A. Who did what?

23 Q. Enter the information into the record.

24 A. No.

25 Q. And your -- now, Mr. Mohamud, however, was one of the

1 people that may have done that, right?

2 A. I don't know.

3 Q. He was your agent at the Shidaal Express?

4 A. Correct.

5 Q. And Abdi Hussein was an agent of the Shidaal Express?

6 A. He was part of the Shidaal.

7 Q. And when you said you trained people to enter in
8 information, Mohamud and Abdi were two of those people
9 correct?

10 A. I did not train them to enter the information on the
11 computer. I trained them to get the requirements, the
12 regulations, and all that. But as far as the computer and
13 how the system works in entering, I didn't train them because
14 they knew the system.

15 Q. All right. So the process of actually entering this
16 information you did not train them on?

17 A. No.

18 Q. You trained them on DAX policies?

19 A. Not only DAX policy but the Department of Financial
20 Institution, OFAC, and all those.

21 Q. So you told them the rules --

22 A. Compliance.

23 Q. -- that they're supposed to follow.

24 A. Correct.

25 Q. But you don't have any way of knowing if they were

1 actually following the rules, correct?

2 A. No.

3 Q. All you do -- you know the rules, and you know what you
4 saw in the computer, correct?

5 A. Yes.

6 Q. And now, Mr. Mohamud, or Mohamud, in your dealings with
7 him, did you find him trustworthy?

8 MR. COLE: Objection, relevance.

9 THE COURT: The objection is overruled. You may
10 answer.

11 THE WITNESS: At that time yes.

12 BY MS. FONTIER: Q. And was he trustworthy when he
13 promised \$500,000 capital to your company?

14 A. Very hard to answer that question because he did not
15 comply.

16 Q. So he made a promise but didn't keep it; is that correct?

17 A. He did not. And it was a requirement by the department.
18 In fact, that's the reason why the department had to repeal
19 or take back the approval; they canceled it.

20 Q. So approval was initially given because he promised that
21 money, and then it was taken away, correct?

22 A. Yes.

23 Q. And it was extended because he promised he would give
24 that money at a later date, correct?

25 A. Correct.

1 Q. And none of those promises turned out to be true,
2 correct?

3 A. No.

4 Q. So in your experiences with Mr. Mohamud, would you say
5 that he's trustworthy?

6 A. After everything that happened, no.

7 Q. One moment, please. And, again, Mohamud and Abdi were
8 the owners of the Shidaal Express, right?

9 A. Yes.

10 Q. So they are the people that are responsible for Shidaal's
11 records?

12 A. Correct.

13 Q. And they're the people that are responsible for
14 maintaining them?

15 A. Correct.

16 Q. And they're the people that are responsible for whether
17 or not those are accurate, correct?

18 A. Yes.

19 MS. FONTIER: I have nothing further, your Honor.

20 THE COURT: Anything further from defense?

21 MS. MORENO: No questions.

22 THE COURT: Okay. Anything further? Mr. Ghappour,
23 did you have any questions?

24 MR. GHAPPOUR: Yes.

25 THE COURT: Please.

Cross-Examination

BY MR. GHAPPOUR: Q. Ms. Locsin, hello.

A. Hi.

Q. You said that when you -- you said that you checked on the Shidaal Express records daily; is that correct?

A. Correct.

Q. And in doing that you logged into to a website, correct?

A. Not me personally, but -- the reason why we have to check it every day, because we have to find out exactly the amount of the transactions because we have -- we need to deposit and also we needed to make sure right away if there were any transactions more than 3,000 because we had more requirements. So yes, we did check it every day.

Q. And when you said it wasn't you but it was we, who checked it?

A. People in my office.

Q. And the --

A. Ultimately it was me.

Q. Ultimately it was you?

A. I had to approve everything.

Q. Did you ever try to check the records for a particular day?

A. Every day.

Q. Every day you would check it?

A. Yeah.

1 Q. Okay. In checking it, you logged into some website,
2 correct?

3 A. Yes.

4 Q. And in logging in to the website, you provided a
5 username?

6 A. We would only have one username in my office.

7 Q. Okay. And you would also provide a password?

8 A. A password I believe.

9 Q. Okay. And you talked about spreadsheets at some point
10 earlier?

11 A. Yes.

12 Q. It wasn't you that made those spreadsheets, correct?

13 A. No, not me personally. I approved it.

14 Q. You approved the spreadsheets.

15 A. Yeah, I have to go to, yeah, each transaction and approve
16 it.

17 Q. And so you would log in the Amal website and check over
18 that data with the data on the spreadsheet?

19 A. It has to balance, yes.

20 Q. It has to balance. And you would check over the transfer
21 number for every transaction?

22 A. Transfer number is -- I don't know what that is.

23 Q. Okay. Did you check over the sender name for every
24 transaction?

25 A. Yes.

1 Q. Okay. And you checked over the recipient name?

2 A. Yes.

3 Q. And you checked over the recipient city?

4 A. The city has to be there, yes.

5 Q. Okay. And the phone numbers for the sender as well as
6 the receiver, correct?

7 A. I don't believe there was always a phone number for the
8 receiver.

9 Q. Okay. You checked over the date obviously, correct?

10 A. Yes.

11 Q. And the amount?

12 A. Yes.

13 Q. And the username of the sender?

14 A. Username of the sender?

15 Q. Yes.

16 A. I don't know what that is.

17 Q. Okay.

18 MR. GHAPPOUR: If I may, your Honor.

19 THE COURT: Has that been marked, counsel?

20 MR. GHAPPOUR: Your Honor, that's Government
21 Exhibit 46 or -- I guess what exhibit number are we up to,
22 the defense.

23 THE COURT: Well, if it's already been premarked as
24 a government exhibit, that's fine.

25 MR. GHAPPOUR: Okay.

1 BY MR. GHAPPOUR: Q. Do you recognize the document
2 I've shown you?

3 A. Yes.

4 Q. And what is that?

5 A. This is the transactions of Shidaal. This is the
6 computer based --

7 Q. That's the screen that you looked at every day, correct?

8 A. Yes.

9 (Exhibit No. 46 identified.)

10 Q. And the column all the way on the right --

11 A. Oh, user.

12 Q. Yeah.

13 A. I got it, Shidaal.

14 Q. Did you check that every day?

15 A. It's all Shidaal, yeah. Well, I see it. It's not that I
16 check it, but I see it.

17 Q. So did you check the screenshot, the data on the website
18 with the data on the spreadsheet every day? Isn't that what
19 you just said?

20 A. We -- we -- what we do is that -- to transfer this to
21 Excel, so whatever is on the computer, we transfer it to
22 Excel --

23 Q. Okay.

24 A. -- for our reports.

25 Q. And so you transferred all the data on that?

1 A. Yes.

2 Q. Every day?

3 A. Every day.

4 Q. Every piece of data on every column, correct?

5 A. I'm not sure if it's every piece of data that we
6 transfer, but we do transfer what we need.

7 Q. And you said that you were the compliance officer for
8 DAX; is that correct?

9 A. Correct.

10 MR. GHAPPOUR: Actually, your Honor, I'd like to
11 move this into evidence if possible, Exhibit 46.

12 MR. COLE: No objection.

13 THE COURT: Exhibit 46 is admitted.

14 (Exhibit No. 46 admitted.)

15 BY MR. GHAPPOUR: Q. You said that you were the
16 compliance officer for DAX; is that correct?

17 A. Yes.

18 Q. And you trained employees at the Shidaal; is that
19 correct?

20 A. Correct.

21 Q. And you trained them to adhere by DAX policy, correct?

22 A. It's actually only Abdi and Mohamud.

23 Q. Just Abdi and Mohamud?

24 A. Correct.

25 Q. And you said --

1 A. Managers.

2 Q. The managers.

3 A. Uh-huh.

4 Q. Were they the owners as well?

5 A. I believe so. Abdi was their compliance officer.

6 Q. Abdi was their compliance officer?

7 A. Uh-huh.

8 Q. And did you require them to take any courses in order to
9 serve as the compliance officers for your agents?

10 A. No.

11 Q. You did not? Did you require them to sign any paperwork
12 that they would adhere to your policies?

13 A. I believe so.

14 Q. You didn't require that from any of their employees
15 though, correct?

16 A. Not the actual employees.

17 Q. If there was an issue with a transaction, who was your
18 point of contact?

19 A. Abdi.

20 Q. And occasionally Mohamud, Abdi Ahmed, correct?

21 A. Usually Abdi.

22 MR. GHAPPOUR: I'm just going to show this to Ms.
23 Locsin again. This is Government Exhibit 46.

24 BY MR. GHAPPOUR: Q. And so the column all the way
25 on the right, all the way at the top over here, you just read

1 it. What did it say? It's a little -- a little darked out
2 over here.

3 A. Shidaal.

4 Q. This column all the way on the right, what does that
5 represent?

6 A. Oh, it says user ID.

7 Q. User ID, correct.

8 A. Yes.

9 Q. And there are multiple user IDs over here?

10 A. Okay.

11 Q. Is that correct?

12 A. I just saw Shidaal --

13 Q. And -- okay.

14 A. -- when you showed it to me.

15 Q. How about the one right on top of Shidaal; what does that
16 one say?

17 A. I can't read it from here.

18 Q. Okay. I'll bring it closer.

19 THE COURT: You can just blow that up on there.

20 MR. GHAPPOUR: I wish I could use that thing.

21 MR. DRATEL: You've got to zoom in.

22 BY MR. GHAPPOUR: Q. You've got a monitor right
23 next to you as well.

24 A. Oh.

25 Q. Excellent.

1 A. I see it.

2 Q. Okay. So the username right on top of Shidaal, it says
3 Shidaal400, correct?

4 A. Correct.

5 Q. So would you -- would you agree that there are multiple
6 usernames in that column?

7 A. I don't know. I wouldn't know what that is. I wouldn't
8 know if there are others, the other multiple user ID. I
9 don't know.

10 Q. Okay.

11 MR. GHAPPOUR: No further questions.

12 THE COURT: Anything further, Mr. Cole?

13 MR. COLE: Nothing, your Honor.

14 THE COURT: Anything further? Okay. Thank you,
15 Ms. Locsin. You are excused.

16 THE WITNESS: Thank you.

17 MR. WARD: Your Honor, the government calls William
18 Via.

19 MS. FONTIER: Your Honor, I would like to renew my
20 objection to Government's Exhibit 53 and move to strike that
21 exhibit.

22 THE COURT: The objection is overruled. The motion
23 to strike is denied.

24 THE CLERK: Can you please raise your right hand.

25 Do you solemnly swear that the evidence you shall give in the

1 cause now before the Court shall be the truth, the whole
2 truth, and nothing but the truth?

3 THE WITNESS: Yes.

4 William T. Via
5 was called by the government and testified as follows:

6 THE CLERK: Can you please state and spell your
7 first and last name for the record.

8 THE WITNESS: Yes, my name is William T. Via,
9 V-i-a, first name is spelled W-i-l-l-i-a-m.

10 Direct Examination

11 BY MR. WARD: Q. Good afternoon, Agent Via.

12 A. Good afternoon.

13 Q. Where do you work, sir?

14 A. I'm employed with the Federal Bureau of Investigation,
15 also known as the FBI.

16 Q. And what unit within the FBI do you work for?

17 A. I work for the Operational Technology Division, and the
18 unit that I'm responsible for is known as the
19 Telecommunications, Intercept, and Collection Technology
20 Unit; we also use the acronym TICTU, t-i-c-t-u.

21 Q. And what does TICTU do?

22 A. TICTU has the responsibility to provide for the FBI the
23 equipment and the services in order to conduct -- to collect
24 intelligence by acquisition, deployment, set up the equipment
25 in field offices. We also do training, we do life-cycle

1 support for that equipment -- we recycle the equipment
2 between three and five years -- and we ensure that our
3 equipment is working 24 by 7, it's on all the time, and also
4 we provide a 24/7 help desk for that equipment.

5 Q. And what's the purpose of the equipment? Is it
6 essentially for audio collection?

7 A. Yes, the equipment is used to gather intelligence when
8 provided with a court order for FISA intercept.

9 Q. Then, sir, how long have you been with TICTU?

10 A. I've been in TICTU since 1999.

11 Q. And you used an acronym, "FISA"; can you explain to us
12 what that is.

13 A. That is the Foreign Intelligence Surveillance Act, and
14 that is for intelligence-gathering for the FBI.

15 Q. And is that just the authority under which you -- one of
16 the authorities under which you can collect audio recordings?

17 A. Yes, sir.

18 Q. All right. Phone calls. I'm sorry. You collect phone
19 calls?

20 A. Yes, sir.

21 Q. And prior to the time that you were with TICTU, can you
22 tell us a little bit about your experience.

23 A. Yes, sir. Before then, from 19 -- 1993 to 1999, I was
24 assigned to the Los Angeles field office as a full-time
25 technical trained agent. From 1988 to 1993, I was assigned

1 to the Pittsburgh field office, where I worked
2 investigations, and then I became a technical trained agent
3 in the Pittsburgh office.

4 Q. And, Agent Via, when you say you were a technically
5 trained agent, can you describe to the jury what those
6 responsibilities entailed.

7 A. Yes, sir. A technical trained agent is a special agent
8 within the FBI who has chosen to work technical matters
9 for -- to further investigations or to assist a case agent.
10 So as a technically trained agent, I would have to get
11 qualified, and then my role would be to manage and to deploy
12 equipment to further investigations for a case agent.

13 Q. So would that include helping other agents working cases
14 to collect telephone calls?

15 A. Yes, sir.

16 Q. And so in the course of your career, have you become
17 familiar with the hardware that the FBI and the telephone
18 companies use to intercept telephone calls?

19 A. Yes, sir.

20 Q. And with -- specifically with respect to wireless
21 telephones, do you have knowledge of how that -- the
22 equipment works to intercept a wireless telephone call?

23 A. Yes, sir.

24 Q. And now I'm using the terms. When we talk about
25 wireless, aren't we just talking about a cell phone?

1 A. Okay.

2 Q. In preparation for your testimony today, Agent Via, did
3 you prepare an exhibit that would help explain your
4 testimony?

5 A. Yes, sir, I did.

6 Q. And Government's Exhibit 50 -- 65, I'm sorry,
7 Government's Exhibit 65, could you take a look at that, Agent
8 Via, and tell me if you recognize it.

9 A. Yes, sir, I do.

10 Q. And is that the chart that you prepared to help explain
11 your testimony to the jury today?

12 A. Yes, sir.

13 (Exhibit No. 65 identified.)

14 MR. WARD: Okay. I'd offer Government's 65, your
15 Honor.

16 MS. FONTIER: No objection.

17 THE COURT: Sixty-five is admitted.

18 (Exhibit No. 65 admitted.)

19 MR. WARD: Can we go ahead and publish 65 to the
20 jury.

21 BY MR. WARD: Q. Agent Via, at the top, the chart
22 you've brought here today, Government's 65, is labeled a
23 wireless CALEA intercept. Is CALEA just the acronym for the
24 law that requires a telephone service provider to assist the
25 FBI in collecting phone calls?

1 A. Yes, sir, it is.

2 Q. Okay. And directing your attention to the center of that
3 chart, do you see the spot where it is called or labeled
4 "telephone company switch"?

5 A. Yes, sir.

6 Q. Can you explain to the jury what that is.

7 A. Yes. On the CALEA intercept, which is the Communication
8 Assistance to Law Enforcement Act, the box that you see in
9 the center that says telephone company switch, that means
10 that the telephone company, once it receives a court order,
11 is going to provision the actual intercept. Another term we
12 use is going to set up the intercept, so you --

13 Q. Can I stop you there for a just a minute?

14 A. Yes.

15 Q. Do I understand you correctly that provisioning is just a
16 term you use in your job to describe setting up the
17 intercept --

18 A. Yes, sir.

19 Q. -- at the telephone company?

20 A. Yes, sir.

21 Q. Okay. Please continue.

22 A. Okay. So at the bottom where you see "carrier
23 provisioning function," once a court order is provided to the
24 telephone carrier and their legal department says that court
25 order is sufficient, then a employee of that carrier will

1 actually sit at a terminal and will provision the intercept.

2 Q. Okay. So at this point then, the telephone company is in
3 position to use the hardware that you've indicated is the
4 telephone company switch to do the intercept; is that
5 correct?

6 A. That is correct.

7 Q. Okay. And how is that activated?

8 A. We provide a cover sheet along with the court order --

9 Q. Sir, please answer my question. Just tell the ladies and
10 gentlemen of the jury how it is that the hardware, the
11 switch, actually functions to collect a call. Is it fair to
12 say that when the phone -- either a phone call is placed or a
13 phone call is answered by the phone that's being intercepted,
14 the switch is activated?

15 A. Yes, sir, that is correct.

16 Q. Okay. Could you describe that process to the jury,
17 please.

18 A. Okay. When a target makes a telephone call, it actually
19 goes to the telephone company, and then it goes to the person
20 that's being called. Because the switch has provisioned the
21 call, it will send to the FBI field office as a bridge so
22 that we get the audio. Want me to continue?

23 Q. No. Let me just ask the questions. We'll break it down
24 because some of the information is very technical, and we
25 just want to go step by step.

1 A. Yes, sir.

2 Q. So if a call is intercepted, regardless of which
3 direction it's placed, your chart indicates that there's two
4 different types of information that are intercepted. Can you
5 indicate on the chart down at the lower right-hand portion
6 the call content channel.

7 A. Yes, sir.

8 Q. What's call content?

9 A. Call content is the actual voices that are being spoken
10 on the intercept.

11 Q. Okay. So that's the audio?

12 A. Yes, sir.

13 Q. Okay. Now, up above that, Agent Via, you indicated that
14 there's a call data channel; and does the call data channel
15 have information other than the audio?

16 A. Yes, sir.

17 Q. And, for example, does it have the phone number -- excuse
18 me -- the time of the call?

19 A. Yes, sir.

20 Q. The date of the call?

21 A. Yes, sir.

22 Q. Does it also have the length or the duration of the call?

23 A. Yes, sir.

24 Q. And I suppose that if you're doing an intercept, you know
25 what phone number you're trying to intercept; is that

1 correct?

2 A. That is correct.

3 Q. Okay. Well, but does the call data also pick up who the
4 other party is to the call?

5 A. Yes, sir, it can.

6 Q. Okay. And does the call data then contain that number?

7 A. Yes, sir.

8 Q. All right. Now, you're showing these on two different
9 paths. Can you describe what happens with the data in the
10 call content, the audio, and then the call data channel, what
11 happens to them?

12 A. Okay. The audio, or the call content channel, that goes
13 directly to the field office that has the collections system.
14 We provide a phone number for the telephone company to send
15 that audio straight to them. The call data channel will go
16 to the engineering research facility, also known as the
17 Operation Technology Division, where I work, it comes into my
18 lab, and from my lab we send it down to the field office
19 where the two come together at the collection box.

20 Q. So although they're separately routed, do they eventually
21 get married back up?

22 A. Yes, sir.

23 Q. And when you say a field office, what are you talking
24 about?

25 A. There are 56 field offices within the United States that

1 are managed by the FBI. All of the collections are done at
2 the field office. The field office is where the collection
3 equipment is.

4 Q. Okay. And, Agent Via, does the San Diego FBI have a
5 field office?

6 A. Yes, sir.

7 Q. And during the time that we're talking about here, which
8 would be the end of 2007 through July of 2008, was there the
9 capacity within the San Diego field office to collect the
10 phone data, the audio data, and the call data --

11 A. Yes, sir.

12 Q. -- within that office? And was there a particular name
13 for the system on that -- on which that data was recorded?

14 A. Yes, sir. The name of the system was the Red Wolf
15 digital collection system.

16 Q. Okay. And was Red Wolf just a, for lack of a better
17 term, a server?

18 A. Yes, sir.

19 Q. And was the collection system, the Red Wolf system,
20 located within a security area?

21 A. Yes, sir. More detail?

22 Q. That's fine, no. Just if you'd answer my question.

23 A. Yes, sir.

24 Q. So when you say it's a security area, what are we talking
25 about?

1 A. Within the FBI space there's a central monitoring plant.
2 It's a secure plant that is locked down through some type of
3 electronics means with limited access to get to the
4 collections system.

5 Q. Okay. And when the call data or -- excuse me. When this
6 data, both the content, the audio, and the call data, hit the
7 collection system and they get matched back up, what happens
8 next?

9 A. Then it would go to a database that validates that these
10 two should be together, and then it's sent to a magneto
11 optical disk at the end of the call.

12 Q. Okay. And can you spell magneto, please? Is that
13 m-a-g-n-e-t-o?

14 A. Yes, sir. Thank you.

15 Q. And is that just a big removable storage device for
16 storage media?

17 A. Yes, sir, it is.

18 Q. Okay. And how soon after a call has been intercepted are
19 the two packets of information here, the audio and the call
20 data, written to what you've described as a magneto optical
21 disk?

22 A. The call, the data and the audio, are matched together
23 within approximately three to five seconds.

24 Q. Okay. Now, what happens when the magneto optical disk is
25 filled up?

1 A. When the magneto optical disk is filled, the
2 administrator of the system is notified to remove that media.
3 That person would not eject that disk from the system until
4 the case agent or his or her designee came to the CMP and
5 actually removed that data and put it into an evidence
6 envelope, starting the chain of command to go into Elsher
7 (phonetic), the system will import a new disk to start
8 collecting the data and audio.

9 Q. Okay. Agent Via, when you were talking about the -- you
10 used an abbreviation; was it for the central processing
11 facility?

12 A. Yeah, central monitoring plant.

13 Q. Okay. Central monitoring plant? Okay. Is that the
14 secure area where the Red Wolf -- is that the secure area
15 where the Red Wolf system is located within the field office?

16 A. Yes, sir.

17 Q. Okay. Now, so the -- when it's full, who comes to claim
18 the disk?

19 A. The case agent or his designee.

20 Q. Okay. And is there any feature within the Red Wolf
21 system that prevents the calls from being altered, the calls
22 or the data related to those calls from being altered or
23 manipulated?

24 A. Yes, it is.

25 Q. So is it possible to manipulate or alter those calls?

1 A. No, sir.

2 Q. And is this similar to a read-only file like we
3 experience in our day-to-day lives in using computers?

4 A. Yes, sir, it is.

5 MR. WARD: Okay. I have no further questions.

6 THE COURT: Cross-examination?

7 MR. DRATEL: Thank you, your Honor.

8 Cross-Examination

9 BY MR. DRATEL: Q. Good afternoon, Agent Via.

10 A. Good afternoon.

11 Q. Now, we're talking about FISA intercepts?

12 A. Yes, sir.

13 Q. And that's a 'round-the-clock process, right?

14 A. Yes, sir.

15 Q. It's a 24/7, 365, collect every call, doesn't get shut
16 off, right?

17 A. Yes, sir.

18 Q. And not what we call -- and we'll explain for the jury --
19 not what we call minimizing. Do you know what I mean when I
20 say minimization?

21 A. Yes, sir.

22 Q. Where someone might ---

23 MR. WARD: Objection, relevance.

24 THE COURT: Well, the objection is overruled. I
25 know you didn't get into minimization per se, but it does

1 relate to how the system mechanically operates.

2 MR. DRATEL: Thank you, your Honor.

3 BY MR. DRATEL: Q. And by minimization, I mean
4 someone might break in and listen to a call, see if it's
5 about the subject matter that's being investigated, and then
6 hang up and only tape the calls that are what are called
7 pertinent, right? That's minimization? Generally, not FISA
8 but generally.

9 MR. WARD: Objection. Can we approach, your Honor?

10 THE COURT: Well, no. I'm going to sustain the
11 objection at this point. Continue on, Mr. Dratel.

12 MR. DRATEL: Okay.

13 BY MR. DRATEL: Q. But you never turn the machine
14 off, right, basically? Captures all the calls?

15 A. Can you repeat the question?

16 Q. Sure. It captures all the calls made during the period
17 that the court order is in effect, correct?

18 A. Yes, sir.

19 Q. Now, you don't listen to these calls, you yourself,
20 right?

21 A. That's correct.

22 Q. And you don't monitor the calls on a real-time basis,
23 pick up a headset or anything like that or check out what's
24 on the phone, right?

25 A. No, sir.

1 Q. That's someone else's responsibility?

2 A. Yes, sir.

3 Q. Now, the person whose phone is being -- whose calls are
4 being intercepted, the phone number, that person is not told
5 that there's a wiretap on their phone, right?

6 A. That's correct.

7 Q. And there's no -- this is very sophisticated technology,
8 right?

9 A. Yes, sir.

10 Q. So that they have no way of telling from the audio or
11 anything like that that they're being overheard, right?

12 A. That's correct.

13 Q. It's all being done by the phone company in a digital
14 manner that doesn't affect the quality of the conversation or
15 anything like that?

16 A. That's correct.

17 Q. And are you familiar also with cell site technology,
18 cellular site technology? I see on there you have on the
19 bottom left it says "cell site."

20 A. Yes, sir.

21 Q. There's also a way to tell where calls are being made,
22 right?

23 A. Yes, sir.

24 Q. Because they're -- because you can essentially figure out
25 from a -- from a cell phone what tower it's using for its

1 signal, right?

2 A. That is correct.

3 Q. Okay. Do you know if that was used in this instance?

4 A. No, sir, I do not.

5 MR. DRATEL: Okay. Thanks very much. No further
6 questions.

7 THE COURT: Any further examination?

8 MS. MORENO: No, your Honor.

9 THE COURT: Mr. Dratel -- excuse me -- Mr. Durkin?

10 Cross-Examination

11 BY MR. DURKIN: Q. Agent Via, did I understand you
12 to say that in this case you used the Red Wolf collection
13 system?

14 A. Yes, sir.

15 Q. That's an older system, correct?

16 A. Yes, sir.

17 Q. You now have a newer system called Red Tiger, correct?

18 A. That is correct.

19 Q. And that's a more efficient system, isn't it?

20 A. It's a newer technology, yes, sir.

21 Q. And the Red Tiger replaced Red Wolf because there had
22 been problems with Red Wolf, correct?

23 A. No, sir.

24 Q. Why did they have to switch then from Red Wolf to Red
25 Tiger?

1 A. I think a change in technology. We always work towards
2 more efficient equipment; we always want to do more with the
3 collection equipment. The Red Wolf system had been around
4 for nine years, so it was time for a change.

5 Q. And do you know what the change consisted of?

6 A. I would not want to go into details about --

7 MR. WARD: Objection, relevance.

8 THE COURT: The objection is sustained.

9 BY MR. DURKIN: Q. I'm a little confused, but I
10 confuse easily, so don't -- there's two different things that
11 get reported; there's call data and call content?

12 A. Yes, sir.

13 Q. What's the difference?

14 A. The call content is the actual audio; it's the voices
15 speaking. The call data would be information about the call.

16 Q. What kind of information about the call?

17 A. It would be the number dialed, the number dialed to, the
18 start time of the call, the stop time of the call, the
19 duration of the call.

20 Q. And how do you get that information; where does that come
21 from?

22 A. That information comes from the telephone carrier.

23 Q. And how does the carrier give you the call data
24 information, the timing and all that; how does that work?

25 A. Comes in on a file right into the Red Wolf system.

1 Q. So you don't have any control over that; is that it?

2 A. That's correct.

3 Q. You have to take whatever the phone company gives you on
4 that, right?

5 A. That is correct.

6 Q. Okay.

7 A. Excuse me.

8 Q. And then you don't have any way of verifying the accuracy
9 of that, do you?

10 A. We can. After the call is complete, the case agent would
11 have the ability to go back and get what we call a data dump
12 and put the two together to validate --

13 Q. I understand. Do you know whether they did that in this
14 case?

15 A. No, sir, I do not.

16 Q. Who would know that, the agent?

17 A. Yes, sir, the investigator would say if that took place.

18 Q. But that's how they'd have to do it; they'd have to go
19 back and get that information specifically. Your own Red
20 Wolf system doesn't get that, correct?

21 A. That is correct.

22 Q. Okay. Now, let's talk about the call content. You say
23 that's the audio part, correct?

24 A. That is correct.

25 Q. So that would be like what you'd listen to; that would

1 be -- you'd hear the speakers, correct?

2 A. That is correct.

3 Q. What's that box underneath with the person over
4 somebody's shoulder at a computer, the carrier provisioning
5 function? What's that?

6 A. That box just gives you a good indication that the
7 carrier will actually set the telephone call up. So I just
8 wanted you to see that the telephone company actually at the
9 terminal use -- provision the intercept, so that's a good way
10 to just to see it.

11 Q. I'm sorry. Like I said, I confuse easily. What -- can
12 you say that again? That's for the -- that means that the
13 telephone company does what?

14 A. Actually sets the intercept up for the FBI.

15 Q. And how do they do that?

16 A. They would go to a terminal, take the information that's
17 been received, and they would type that information to their
18 system in order to effect an intercept.

19 Q. So a human being has to do that?

20 A. Yes, sir.

21 Q. So how do you know that the human beings at the telephone
22 company did that every time?

23 A. We have a relationship with the carriers through
24 communications, and so we have discussed different ways
25 that -- or this particular way that a clear intercept would

1 be done so it would be a standard.

2 Q. So you rely on the phone company people to do that for
3 you; is that what you're saying?

4 A. Yes, sir.

5 Q. Okay. And do you know what kind of people the phone
6 company uses to do that?

7 A. Technical personnel would be the term I would --

8 Q. They're not -- they're not trained by the FBI, correct?

9 A. No, sir.

10 Q. And they're not FBI employees, correct?

11 A. No, sir, that's correct.

12 Q. Okay. Now, Mr. Dratel -- and the reason I asked that is
13 Mr. Dratel just asked you, this is a 24/7 or 24-hour-a-day,
14 seven-day-a-week operation, correct?

15 A. For the FBI, yes, sir.

16 Q. Okay. And so I take it the phone company then has to
17 have somebody there 24/7 as well, correct?

18 A. Some of the telephone companies may have someone there 24
19 hours.

20 Q. Well, how else would they know how to get it going, what
21 you just said?

22 A. I would tend to think that we would notify the carrier
23 that we have a intercept, and I think there are so many days
24 before the intercept has to actually start, so if it's not
25 done that first day, it's done within so many days.

1 Q. But -- so you don't really know though whether you have
2 every call during that 24/7 operation, do you?

3 A. We have every call that's provided by the telephone
4 carrier.

5 Q. I understand. Okay. Well --

6 THE COURT: Anything further, Mr. Durkin?

7 MR. DURKIN: Just one.

8 BY MR. DURKIN: Q. And did you say how many FBI
9 field offices are there, 56 or 52?

10 A. Fifty-six field offices.

11 Q. Fifty-six. Okay.

12 MR. DURKIN: Thank you.

13 THE COURT: Mr. Ward, anything further?

14 MR. WARD: Just a little -- few question or two,
15 your Honor.

16 Redirect Examination

17 BY MR. WARD: Q. Agent Via, on cross-examination
18 Mr. Durkin asked you a little bit about the personnel at the
19 telephone company and how this switch worked. Is it the case
20 that when you first set up an intercept, the switch is just
21 turned on by the provider?

22 A. Repeat the question.

23 Q. When you do what you called provisioning --

24 A. Yes, sir.

25 Q. -- you've got the authority to do the intercept?

1 A. That is correct.

2 Q. The telephone carrier, you know, the service carrier then
3 sets up the switch to intercept that number; is that correct?

4 A. That is correct.

5 Q. Okay. And that's a one-shot deal, isn't it?

6 A. Yes, sir.

7 Q. Okay. And how long does this switch remain in effect?

8 A. Until the court order expires.

9 Q. Okay. And are the calls automatically intercepted either
10 when the call -- a call is placed to that number or the
11 caller that owns that number calls out?

12 A. Automatically intercepted.

13 MR. WARD: Okay. Thank you. I have no further
14 questions, your Honor.

15 THE COURT: Anything further?

16 MR. DRATEL: Yes, your Honor.

17 Recross-Examination

18 BY MR. DRATEL: Q. So as you sit here, you're
19 confident that you got every call, right?

20 A. Every call that's provided by the carrier is what we
21 receive, yes, sir.

22 Q. And you have no reason to believe they didn't capture all
23 the calls?

24 A. No, sir.

25 Q. Do you know how long the process was on this particular

1 case?

2 A. No, sir.

3 Q. Were you involved personally in setting up the equipment
4 on this case?

5 A. No, sir. My responsibility is to provide the equipment
6 to the field offices. The intercepts -- the investigation's
7 all done at the local level.

8 Q. Then you just pick it up when it's finished?

9 A. Pick it up?

10 Q. In other words, the equipment --

11 A. No, sir. The equipment is -- stays in the central
12 monitoring plant at the field office.

13 Q. So you just essentially set up the equipment to do the
14 intercepts --

15 A. Yes, sir.

16 Q. Okay. Do the collections rather, right?

17 A. Yes, sir.

18 MR. DRATEL: Okay. Thank you.

19 THE WITNESS: You're welcome.

20 THE COURT: Anything further, Mr. Ward?

21 MR. WARD: We ask the witness be excused, your
22 Honor.

23 THE COURT: The witness may be excused. Thank you,
24 sir.

25 THE WITNESS: Thank you, sir.

1 THE COURT: You have a ten-minute witness?

2 MR. COLE: Yes.

3 MR. WARD: I think so, your Honor. The government
4 calls Victoria Homfeld.

5 THE CLERK: Can you please raise your right hand.
6 Do you solemnly swear that the evidence you shall give in the
7 cause now before the Court shall be the truth, the whole
8 truth, and nothing but the truth?

9 THE WITNESS: I do.

10 Victoria Homfeld
11 was called by the government and testified as follows:

12 THE CLERK: Can you please state and spell your
13 first and last name for the record.

14 THE WITNESS: Victoria Homfeld, V-i-c-t-o-r-i-a,
15 Homfeld, H-o-m-f-e-l-d.

16 Direct Examination

17 BY MR. WARD: Q. Good afternoon, Ms. Homfeld.
18 Where do you work?

19 A. I work for Naval Criminal Investigative Service, and I'm
20 detailed over at the San Diego Regional Computer Forensic
21 Lab.

22 Q. And what does the Regional Computer Forensic Lab do?

23 A. They accept digital evidence from various law enforcement
24 agencies, and we do exams or imaging of the digital evidence
25 that's submitted to the RCFL and then do a presentation for

1 court.

2 Q. Okay. And what is your position within the RCFL?

3 A. I'm an investigative computer specialist, a forensic
4 examiner.

5 Q. Okay. And do those duties involve actually supporting
6 search warrants and other imaging of computers?

7 A. Yes. When we get evidence that's submitted and it's -- a
8 case is assigned to us, we have to review the legal authority
9 on it.

10 Q. Okay. And how do you -- how long have you been in this
11 position?

12 A. I joined -- well, actually got detailed over to the RCFL
13 in 2005, started off as part time, and towards the end of
14 2005 became full time.

15 Q. And you used the term "imaging." Can you explain to the
16 jury what that means.

17 A. Imaging actually is an exact duplicate. If you have a
18 hard drive, we make a copy of it, and it's a bit-by-bit copy.
19 It has a hash value on it, which is like a digital
20 fingerprint. It's a math function that's like a logarithm
21 and it assigns about a 32-character hash value. And it shows
22 that -- the evidence that was on the hard drive, and once
23 it's been imaged and put on staging media, if the hash values
24 match, then nothing's been changed on it, so it's an exact
25 duplicate.

1 Q. Ms. Homfeld, can we back up just a bit. I want to talk a
2 little bit up here, and you're into the really technical
3 aspects of this. What's the goal of imaging computer data?

4 A. To make a copy, an exact duplicate copy of a hard drive
5 or a cell phone or whatever you're in the process of imaging.

6 Q. Okay. And when you started talking about hash values --
7 and maybe we'll talk about those in a little bit more
8 detail -- is that, you know, a part of the process or
9 procedure to preserve the information in an unaltered state?

10 A. Yes, it is.

11 Q. Thank you. How much training do you have in imaging
12 computers and preserving the data in an unaltered state?

13 A. In order to be certified by the FBI through their CART
14 program, which is Computer Analysis Response Team, you have
15 to go through a series of about five searches. You have to
16 go through over four or 500 hours worth of training, you do
17 exams with a mentor and the mentor would look over your exam
18 work and your imaging, and then you have to go through like a
19 moot court that the CART puts on, and then once you pass
20 that, you're certified by the FBI.

21 Q. Okay. And have you been certified by the FBI; is that
22 what you're telling us?

23 A. Yes, I have.

24 Q. Okay. How many computer searches have you assisted in or
25 supported?

1 A. As of today from the time I've started --

2 Q. Sure.

3 A. -- probably hundreds.

4 Q. Okay. And directing your attention to April 8, 2008, did
5 you participate -- I'm sorry. I actually have a mistake in
6 my notes. April 8, 2009.

7 A. Yes, I did.

8 Q. Did you participate in a search warrant at the Shidaal
9 Express?

10 A. Yes, I did.

11 Q. And do you recall the location of that Shidaal Express?
12 Was it the 54th Street location?

13 A. Yes, it was.

14 Q. Okay. And do you recall what Shidaal Express was?

15 A. I believe it was like in the Safari Market and it was I
16 think Number A, and it's a -- some sort of money cashing
17 exchange.

18 Q. Okay. And when you went to the Shidaal Express, did you
19 assist the FBI in their conduct of a search warrant that day?

20 A. Yes, I did.

21 Q. And how did you support the FBI's search that day?

22 A. When we arrived at the Safari Market, we were met by the
23 case agents. Which was Mike Kaiser and FBI agent Lovely,
24 Jason Lovely, and they explained the search warrant over to
25 us, and what they wanted was a live capture.

1 MS. FONTIER: Objection, hearsay.

2 THE COURT: Objection is overruled.

3 THE WITNESS: What they wanted was a live capture
4 of some data that was on the Internet.

5 BY MR. WARD: Q. When you say a live capture, can
6 you describe to the jury what that means.

7 A. The computer that was in the office, in the main office
8 there, once it's connected to the Internet, the user would
9 have to go to a website and then they log into that website
10 and then you're presented with a menu. And we needed to get
11 data remittance between two dates; I believe it was July 1st
12 of 2009 -- '7 -- I'm sorry -- and then on April 9 of.

13 Q. Ms. Homfeld, I know it's been a long time. If you could
14 just -- and I'm not asking you to recall all the specific
15 dates, but if you could describe to the jury how it is you do
16 a live capture of data from the Internet just in general.

17 A. In general? Okay. The user logs into the website, we
18 get the report and export it out to an Excel spreadsheet. I
19 have a staging media that's attached to the subject machine,
20 and I have a thumb drive that's attached to the subject
21 machine. The thumb drive has my software on it. The hard
22 drive is where I'm going to put the data that I'm going to
23 take from the Excel spreadsheet, copy it over to there, and
24 then I'm going to do an image, and from there I'll get a hash
25 value. And that's basically how I do a live capture.

1 Q. Okay. What's the difference between a live capture and
2 creating an image of a hard drive?

3 A. Creating an image of a hard drive, I'm actually going to
4 pull the hard arrive out of the computer. I can image it on
5 site or I can take it back to the lab and do an image back at
6 the lab. On a live capture the machine is not turned off, it
7 is running at the time, and I'm just probably pulling files
8 out and not doing a full image.

9 Q. Okay. So on the day that you were at the Shidaal
10 Express, you did a live -- did you a live capture of a
11 remittance list?

12 A. Yes, I did.

13 Q. And was the remittance list -- remittance list -- from
14 the Amal Commercial Brokerage Service?

15 A. Yes, it was.

16 Q. And how did you gain access to the Internet website where
17 that -- where that -- where that record was located?

18 A. The two case agents, Special Agent Lovely and Special
19 Agent Kaiser, had the subject go to his computer, log into
20 the website, type in the website address, and then the user
21 was prompted to put in a user name and a password. And from
22 there I was able to either print or do an Excel spreadsheet
23 and copy the file down to my staging media.

24 Q. Okay. Handing you what's been marked for identification
25 as Government's Exhibit 50, I'll ask you if you recognize

1 that, Ms. Homfeld.

2 A. Yes, I do.

3 Q. And what is Government's Exhibit 50?

4 A. This looks like one of the main menus that you would see
5 when the user had logged in, and this was doing a remittance
6 types of reports that you could do, and the one that we did
7 was --

8 Q. Ms. Homfeld, stay with me. It's not in evidence yet. Is
9 that a picture --

10 A. Yes.

11 Q. -- of one of the screen shots of the Amal Commercial
12 Brokerage server?

13 A. Yes, it is.

14 Q. And that's the website you were at doing the live capture
15 that day; is that correct?

16 A. Yes.

17 (Exhibit No. 50 identified.)

18 MR. WARD: Okay. I offer Government's 50, your
19 Honor.

20 MS. FONTIER: No objection.

21 THE COURT: Exhibit 50 is admitted.

22 (Exhibit No. 50 admitted.)

23 BY MR. WARD: Q. So that the record's clear, you
24 took a picture of that with a camera, right?

25 A. Yes, I did.

1 Q. Okay. And that was part of your report afterwards?

2 A. Yes, it was.

3 Q. Okay. And up on the left-hand side, it says remittance?

4 A. Yes.

5 Q. Okay. And is there also an entry that talks about
6 remittance list?

7 A. Yes. It's about the third bullet down.

8 Q. Okay. Do you have the pointer right there? Could we
9 blow that up? Okay. So the remittance list, was that the
10 function that you accessed in order to do the live capture?

11 A. Yes, it was.

12 Q. Okay. And going to Government's Exhibit 46, which is in
13 evidence -- I think it's up here --

14 MR. WARD: Oh, I'm sorry. It's already in
15 evidence. If we could publish that to the jury.

16 BY MR. WARD: Q. Okay. Now, do you recognize this
17 document here?

18 A. Yes, I do.

19 Q. Okay. And you're the person who took the picture of
20 that?

21 A. Yes, I am.

22 Q. Is that another screen shot of the Amal Commercial
23 Brokerage Service website that you were doing the live
24 capture on?

25 A. Yes, it is.

1 Q. And what is the difference between this one and the one
2 that was depicted in Government's 50?

3 A. In Government's Exhibit 50, this is like the menu, the
4 report menu. And once you pick the remittance list, you are
5 prompted to put in date range, which I did, and that would be
6 the screen that -- shot that I see once the date range was
7 put in.

8 Q. Okay. And what was the date range on the -- that you
9 used that day at Shidaal Express?

10 A. I believe it was July 1st or 2nd of 2007.

11 Q. Okay. And is it recorded in that picture there?

12 A. Yes, it is.

13 MR. WARD: If we could enlarge the top center.

14 Okay.

15 BY MR. WARD: Q. Okay. And so once you entered
16 that date range, what happened next?

17 A. Your -- you can either print it or you can make an Excel
18 spreadsheet out of it.

19 Q. Okay.

20 MR. WARD: So if you can pan back out, can you
21 focus on the tool bar up above the ledger entries that say
22 print and Excel.

23 BY MR. WARD: Q. And which option did you choose
24 for your live capture?

25 A. I did the Excel spreadsheet.

1 Q. Okay. And you have a lot of technical knowledge but, Ms.
2 Homfeld, is there anything in your experience that you --
3 that this is similar to that the jurors might understand?

4 A. Sure. It would be like when you're balancing your
5 checkbook and you go online and you can -- like if you're
6 paying bills online with your checking account, you can
7 either download your account activity to like Quicken or to
8 an Excel spreadsheet, that's basically what we're doing here.

9 Q. Okay. And did I understand you correctly that you chose
10 the -- the Excel function?

11 A. Yes, I did.

12 Q. And then what did you do?

13 A. Then it prompts you to save the file. I saved it out and
14 saved it as an Excel spreadsheet. Then I also saved it as a
15 CSV, which is just like a spreadsheet also. Since this is
16 like a database, CSV is really a copy of records and the
17 records are divided by fields, and those fields are divided
18 either by like a tab or a comma semicolon.

19 Q. Okay. So you had two different copies of the remittance
20 list?

21 A. Correct.

22 Q. Okay. And what did you do after that?

23 THE COURT: Mr. Ward, I'm going to stop you here.
24 I know you anticipated finishing in ten minutes, but we're
25 already beyond that, and I don't want to keep the jury any

1 longer, there may be some cross-examination, so we'll stop.
2 Ms. Homfeld, if we can ask you to return Monday or at another
3 time to be arranged by counsel to finish up your --

4 THE WITNESS: Certainly.

5 THE COURT: -- testimony. I'm sorry we weren't
6 able to do it today, but you're excused for now, okay?

7 THE WITNESS: Okay.

8 THE COURT: All right. Ladies and gentlemen of the
9 jury, we're going to stop for today obviously; it's that
10 time. And remember that we are not in session tomorrow on
11 this case, so if you find yourselves driving toward the
12 courthouse and you realize what you're doing, turn around; we
13 won't be here for you.

14 You're going to be away from the case, as I say,
15 three days. Don't give the case thought, don't make any
16 decisions, obviously don't discuss the case amongst
17 yourselves or with anyone else. Remember the admonition to
18 stay away from all reporting in any shape or form not only on
19 this case but any other case or story that has anything to do
20 with the types of issues involved in this case.

21 You can leave your notebooks right there on the
22 seats; they'll be fine. I want to thank you on behalf of all
23 the attorneys. I want to thank you for your promptness; it's
24 really important that we get started on time, and you've been
25 very prompt with us. So we will bid you adieu until next

1 Monday at nine o'clock.

2 Any questions on any of the mechanics,
3 administrative matters, housekeeping? Okay. Apparently not.
4 Thank you. Have a good weekend.

5 (The jury left the courtroom.)

6 THE COURT: All right. Just a couple of quick
7 matters, counsel. We have a full calendar tomorrow, a full
8 criminal calendar, and so you're going to need to pack things
9 up. And, you know, if you'd like to -- well, you'll probably
10 want to take your stuff with you, sure, it's the weekend, but
11 if there's anything you'd like to leave that will lighten
12 your burden, feel free to do that. You can put those things
13 up against the wall; they'll be secure. If you have any
14 concerns about security, then please feel free to take
15 everything out. I think we'll probably leave the equipment
16 where it is. Mr. Cole, are you going to file a response to
17 the Section 5 --

18 MR. COLE: Yeah. I got it in court, so I haven't
19 even opened it yet, but we will go look at it right now and
20 file a response as soon as we know what it is.

21 THE COURT: Okay. Take your time.

22 MR. COLE: I'll get it this weekend.

23 THE COURT: No, be thoughtful. Give it some
24 thought, and then we'll proceed from there.

25 MR. COLE: Okay.

1 THE COURT: Okay.

2 MR. COLE: And should we also contact chambers -- I
3 don't know if the -- do you want to see it in camera? The
4 order that came out today -- should we set up a time for that
5 or --

6 THE COURT: Sure.

7 MR. COLE: Okay. Thank you, your Honor.

8 MR. DRATEL: Your Honor, just logistics, and
9 however the Court wants to handle it. Because of the nature
10 of a CIPA filing, other counsel have not seen what I filed on
11 everyone's behalf, so at some point I'm going to --

12 THE COURT: What was that? What is that sound?
13 Wow. Sounded almost like a gunshot going off. Finally after
14 two days I figured out what it was. You know, every time it
15 happens -- that's okay. We were trying to figure out what
16 that was. If you can hold off on that for just a bit.

17 MR. DRATEL: I don't know whether the Court has the
18 capacity or whether we have to deal with the U.S. Attorney's
19 in terms of a secure area.

20 THE COURT: Well, why don't you two -- why don't
21 you two get together.

22 MR. COLE: We'll take care of it.

23 THE COURT: Okay. You can talk to this gentleman
24 and then we'll have -- I know the government wants to look at
25 what's been filed here. Okay. Then that will do it until

1 nine o'clock Monday morning for us. Thank you. You all have
2 a good weekend. Safe travels. Anybody going back? All
3 right.

4 (There was a break in the proceedings for the weekend
5 recess.)

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Certificate of Reporter

I hereby certify that I am a duly appointed, qualified, and acting Official Court Reporter for the United States District Court; that the foregoing is a true and correct transcript of the proceedings had in the mentioned cause on the date or dates listed on the title page of the transcript; and that the format used herein complies with the rules and requirements of the United States Judicial Conference.

Dated January 13, 2014 at San Diego, California.

Debra M. Henson

/s/ Debra M. Henson (electronic)
Debra M. Henson
Official Court Reporter